JUDGMENT OF THE COURT
16 APRIL 1970[1]

La Compagnie d'Approvisionnement, de Transport et de Crédit, S.A. v Commission of the European Communities[2]

Case 65/69

Summary

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

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

In Case 65/69

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

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Armando Toledano-Laredo acting as Agent, assisted by Jacques H. J. Bourgeois acting as Adviser, with an address for service in Luxembourg at the Chambers of Émile Reuter, 4, boulevard Royal,

defendant,

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

Application for the annulment of the fixing of the subsidy for common wheat and meslin (Article 10.01 A in the customs tariff) at 58.49 FF per metric ton, in the annex provided for by Article 2 of Regulation (EEC) No 1670/69 of the Commission of 22 August 1969 on certain measures to be taken in the cereals and rice sectors as a result of the devaluation of the French franc,

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts of the case and the procedure followed may be summarized as follows:
After the devaluation of the French franc, the Council of the European Communities decided on 11 August 1969, first, not to change the value of the unit of account and, secondly, to issue a regulation containing measures designed to ensure that the adaptation to the situation thus created, which would affect the French prices of products subject to a common organization of the market, should not be too abrupt. To this end Regulation No 1586/69 of the Council (OJ L 202 1969 p. 1) provides in particular that, for a limited period, the intervention prices payable by the French authorities (in units of account) may be reduced by 11.11% (Articles 1 and 2). So as to avoid trade difficulties which might result from this situation, Article 3 provides that France shall grant import subsidies and levy compensatory amounts on exports. However, Article 8 gives the Commission the powers necessary to lay down the methods of applying these provisions, methods which include 'in particular the fixing of the amounts of the import subsidies and of the compensatory amounts charged for on exports.'
The subject of the present dispute is Regulation No 1670/69 of 22 August 1969 (OJ L 214 p. 7), whereby the Commission laid down implementing measures with regard to the cereals and rice sectors, and in particular Article 2, which states: 'The subsidies granted for imports and the compensatory amounts charged for exports by France shall be fixed in the annex hereto.'
The applicant has made an application directed against the fixing in the annex provided for in Article 2 of Regulation No 1670/69 of the subsidy on imports of common wheat and meslin at 58.49 FF per metric ton. It states that in fixing this

subsidy — the only matter at issue in the present proceedings — at 58.49 FF per metric ton, the Commission took into consideration the fact that wheat prices did not rise in France but failed to take into account the fact that at the same time the price CIF-Antwerp and the CIF-mill-Paris transport costs have increased in such a way as to make the rise in the cost of imported wheat greater than it would have been solely as a result of the devaluation of the French franc, that is to say, the price rose, not to 68.29 FF as the Commission had calculated, but to 70.22 FF per quintal. As a result the Commission infringed Regulations Nos 1586/69 of the Council and 1670/69 of the Commission as well as the principle that parties must be treated equally, which is enshrined in the Treaty.

The application was lodged at the Court Registry on 22 October 1969.

An interlocutory application was made to the Court by the defendant on 26 November 1969 raising an objection on the grounds of inadmissibility, based on the second paragraph of Article 173 of the EEC Treaty, with a request that Article 91 of the Rules of Procedure be applied.

On 19 December 1969 the applicant presented its submissions on the objection.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure with regard to the objection of inadmissibility.

The parties presented their oral arguments at the hearing on 17 February 1970.

The Advocate-General delivered his opinion at the hearing on 11 March 1970.

II — Conclusions of the parties

The *applicant* claims that the Court should:

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

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

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

In its interlocutory application the *defendant* claims that the Court should:

deciding in accordance with Article 91 of the Rules of Procedure on the inadmissibility of the original application, and without going into the substance of the case:

— declare the original application inadmissible;

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

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

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

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

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

III — Submissions and arguments of the parties as to admissibility

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

The *defendant* first alleges that, taken as a whole, Regulation No 1670/69 has general application in that it determines, for products subject to a common organization of the market in the rice and cereals sectors, the provisions for giving effect to the rules introduced by Regulation No 1586/69 of the Council. Consequently the question raised by the present application is whether the contested provision constitutes an exception in this respect, in that its nature is not primarily legislative, so that it may

be regarded as a decision of direct and individual concern to the applicant. It is from this viewpoint that the defendant develops its arguments.

After describing the situation which resulted from, on the one hand, the devaluation of the French franc and on the other hand from the adoption by the Council of Regulation No 1568/69, the defendant concludes that the fixing of the amounts of the subsidies for imports and of the compensatory amounts charged for on exports in respect of common wheat and meslin is an integral part of the mechanism established by Regulation No 1586/69 of the Council and put into effect by Regulation No 1670/69 of the Commission.

Moreover, according to the defendant, that the provision fixing the amount of the subsidy on imports has general application in view of the following considerations:

— the provision in question applies to objectively determined situations;

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

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

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

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

It is next pointed out by the applicant that it has no objection whatsoever to the principle of fixing the amount of the subsidies for imports of common wheat and meslin, but solely to the fixing of that subsidy at 58.29 FF per metric ton. According to the applicant there can be no doubt that this provision is of direct and individual concern to it because the consequence of setting the sum at this figure has been a loss for it of 19.30 FF per metric ton imported, or 1.93 FF per quintal. It is obvious that the rise in the CIF-mill prices is not the same for all the various undertakings importing wheat and that costs must necessarily vary according to the geographical location of the factory. Thus, even though the amount has to be fixed at a flat rate, it must take into account that increase in the cost price. In any event it cannot be considered as affecting all the undertakings concerned in a similar fashion and this alone, according to the applicant, is sufficient to destroy the argument on the point set out in the interlocutory application.

Next the applicant claims that the case-law of the Court reveals that the concept of individuality does not imply that only one natural or legal person may be concerned by the measure in question; it can equally well support the proposition that more than one person can be affected, provided that such persons are clearly identifiable and that their activities are carried out in the same marketing centre. That is precisely the case here, the undertakings affected having been recognized as such by the Commission on the date of the contested measure, the only date relevant in the present instance. On the other hand the contested provision also concerns the applicant directly by virtue of the losses it has suffered consequent upon the fixing of the subsidy at 58.49 FF per metric ton.

Grounds of judgment

1 In an application lodged on 22 October 1969 the applicant instituted proceedings for the annulment of Regulation (EEC) No 1670/69 of the Commission of 22

August 1969 on certain measures to be taken in the cereals and rice sectors following the devaluation of the French franc (OJ L 214 p. 7) in so far as it fixes at 58.49 FF per metric ton the amount of the subsidy on imports of wheat and meslin referred to in the annex provided for by Article 2.

2 In an interlocutory application lodged at the Registry on 26 November 1969 the defendant has raised an objection of inadmissibility under Article 91 of the Rules of Procedure, claiming that the measure in question was a regulation and was not of individual concern to the applicant.

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

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

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

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

7 However, according to the applicant the fixing of the contested rate of 58.49 FF per metric ton of wheat imported affects the undertakings concerned unequally, since it has been calculated without taking into account the differing effects of the increase of certain constituent elements of the cost price, in particular CIF transport costs, which are payable in non-French currency.

8 It says that since these costs vary according to the geographical location of the

factory, the fixing of the contested amount does not have general and uniform effect but affects the various French importers in different ways, and, therefore, individually.

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

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

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

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

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

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

15 Accordingly the application must be dismissed as inadmissible.

Costs

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

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

18 It must therefore be ordered to pay the costs.

On those grounds,

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

THE COURT

hereby:

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

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 16 April 1970.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER

(See Case 63/69, p. 213)