OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 23 APRIL 1975 [1]

Mr President,
Members of the Court,

1. The machinery of compensatory amounts introduced by Regulation No 974/71 of the Coucil of 12 May 1971 (OJ L 106, p. 1), which has already engaged the attention of the Court, was made applicable to colza and rape seeds by Regulation No 1471/71 of the Commission of 9 July 1971 (OJ L 154, p. 26). This extension was made on the basis of the statement that it had proved to be necessary to apply the compensatory amounts in respect of the new harvest of those products 'the marketing of which is due to start at the beginning of the marketing year'. When the application of the system of compensatory amounts was extended to France the Commission, in Regualtion No 17/71 of 31 December 1971 (OJ L 5, p. 1), laid down the compensatory amounts applicable with effect from 3 January 1972 to trade in the products concerned between France and third countries; provision was made for payment of compensatory amounts on exports and for a corresponding levy on imports into France. By Regulation No 144/72 of 21 January 1972 (OJ L 19, p. 1), the Commission increased these amounts with effect from 24 January. However, in Regulation No 189/72 of 26 January (OJ L 24, p. 25) the Commission revoked, with effect from 1 February, the compensatory amounts applicable in the sector concerned giving as its reason that 'the present situation of the market is such that application of the compensatory amounts is no longer necessary to avoid disturbances of the market in the products concerned'.

Considering itself to have suffered loss from the effect of such an abrupt revocation on the execution of current contracts, the Comptoir National Technique Agricole of Paris brought an action for damages against the Commission.

2. The greater part of the loss alleged by the applicant is indirectly connected with the 'aid' for oil seeds harvested and processed in the Community, for which provision is made in Article 27 of Regulation No 136/66 of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ 172 of 30. 9. 1966, p. 3025). This form of Community aid, which is reminiscent of the British system of 'deficiency payments', was provided for oils and fats in lieu of the levy because, in view of the extremely low level of production of fats of vegetable origin within the Community, the introduction of the levy in this sector did not appear to be desirable. The amount of supplementary aid is equal to the difference between the target price and the world market price, which is usually lower.

Although it specifies the amount of the loss the application initiating proceedings does not clearly explain what it consists of and in what way it is connected with withdrawal of the compensatory amount. In its reply, however, the applicant explains that, as a result of the rise in French currency, imposition of the compensatory amounts on imports was essential to maintain the protection for the French operator which the aid was intended to ensure for him, and that it sustained the alleged loss because discontinuance of the levy of compensatory amounts on products coming from third countries exposed it to increased and, in its view, abnormal

1 — Translated from the Italian.

competition from such imported products: to meet them, there was, in fact, no restoration of the equilibrium which had been upset by fluctuations in exchange rates and, in particular, by the depreciation of the dollar against the French franc, as a result of which the aid provided for under Article 27, quoted above, was, in practice, deprived of much of its effect.

I must begin by saying that I do not share the defendant's view that the admitted vagueness of the application initiating proceedings is in itself sufficient to render inadmissible that part of the claim which refers to the alleged damage. It cannot, moreover, be said that, in the application, there is no hint at all of this situation, which was particularized later in the reply, where the applicant sets out his case and the substance of the alleged damage.

On the substance of the application, however, I find it rather difficult to attribute liability to the Commission for the alleged drop in the market value of those goods in respect of which the applicant had obtained an advance fixing of supplementary aid; I say this because any drop was the outcome in the Community of a measure based on consideration of economic policy and revocation of the compensatory amount in question undoubtedly represents such a consideration.

The applicant errs in contriving to establish that so far as Community measures dealing with monetary compensatory amounts are concerned, the monetary aspect and considerations of economic policy are wholly unconnected. Though it is true that the incidence of the monetary measures on the prices of the products can arise from a straightforward mathematical calculation, in which there is no element whatever of discretion, it is also true that compensatory amounts ought not to be mechanically applied in every case where such incidence occurs, but only in cases where, as expressly stated in the last recital of the preamble to Regulation No 974/71, this incidence 'would lead to difficulties'; and this must mean difficulties involving not individual operators but the working of the common market organization and, in the case in point, the prices system and the working of the intervention machinery. When, accordingly, this danger disappears, application of the compensatory amounts must be discontinued notwithstanding the continued incidence of currency fluctuations on the prices of the products.

Quite apart from this consideration, however, there are other reasons which are sufficient in themselves to justify rejection of the application.

Since revocation of the compensatory amount does not have any direct effect on the level of the selling price obtained by holders of advance-fixing certificates for aid, there is no direct causal link between any loss due to the reduced market value and the provision revoking it. Nor, moreover, has the applicant demonstrated that the contracts for sale in the Community of the consignments for which he had obtained an advance fixing were, contrary to what would appear to be the normal practice, signed after fixing took place.

Finally, the way in which the amount of the alleged damage has been calculated by the applicant was, as it has since recognized, somewhat abstract: this was to multiply the quantity for which advance-fixing certificates had been obtained for aid by the compensatory amount which had been discontinued. Calculation on this basis would be acceptable only if it had been demonstrated not only that the market price in the Community had suffered a reduction which was exactly equal to the compensatory amount which had been withdrawn, but also that its withdrawal was the direct cause of that reduction. But the allegation of the defendant, which was not challenged by the applicant, that the price of colza oil had suddenly dropped in the two months prior to that in which the compensatory

amount was revoked, and that the various reductions in the price of the product before and after withdrawal of the compensatory amounts reflected reductions which occurred in the case of other types of oil, do not enable us to etablish with certainty that there is any relationship of cause and effect between the act of the Commission and the reduction in the market value of colza oil.

This part of the applicant's claim can therefore be set aside at the outset in view both of the complete absence of proof that any damage has been sustained and, even assuming a fall in price on the internal market, in view of total failure to demonstrate the necessary relationship of cause and effect between the provision made by the Commission and the loss.

3. The other part of the alleged damage concerns failure to pay compensatory amounts on the exportation of 8 000 metric tonnes of produce in respect of which the applicant had obtained an advance fixing of the export refund as provided for under Article 28 of Regulation No 136/66 of the Council, referred to above. In this case, the loss is the exact equivalent of the total amount of the payment which the exporter failed to receive in respect of the quantity for which, during, the period when compensatory amounts were in force, he had optained an advance fixing of the export refunds, and which he had been relying upon when the contract of sale was concluded.

The Commission maintains that this head of claim is also inadmissible because the loss complained of is the exact equivalent of the sum which was not paid as compensatory amounts and the action for damages therefore constitutes an alternative form of an action for payment of sums alleged to be due. In the Commission's view, an action for damages is admissible only if there is loss distinguishable from the loss of financial benefit due to revocation of the compensatory amounts.

However, the Court has repeatedly held that an action for damages differs from an application for annulment in that it seeks not the cancellation of a particular measure but compensation for damage caused to a private party, as a separate entity, by an institution in the performance of its duties (for an example, see the Judgment in Joined Cases 9 and 11/71, *Compagnie d'Approvisionnement, de transport et de crédit et Grands Moulins de Paris,* Rec. 1972, p. 403). Basing itself on this principle, the Court has held an action for damages to be admissible even when, in the case of the party concerned, the alleged damage is equivalent to the total of the compensatory amounts which, according to the applicant, the Commission ought to have fixed for exports of a particular product (see the Judgment in Case 43/72, *Merkur* v *Commission* [1973] ECR 1069), or when the alleged damage corresponds exactly with the difference between the subsidies received on the basis of existing rules and those which would have been due under a set of rules in accordance with the applicant's claim *(Merkur,* cited earlier).

Even, therefore, when a decision of general application is involved, it is necessary, in order to establish whether the effect of the claim for damages amounts in practice to the same as annulment of a decision which is claimed to be the cause of the loss, to ascertain the cause of the loss, and therefore the consequences, not in general terms but in terms of the applicant alone. For this reason, I do not believe that the fact that the amount of the applicant's alleged loss is the same as the possible consequences for him of an annulment of a decision which caused it could, in this case, justify holding the claim for damages to be inadmissible because, even if entertained, the outcome of the claim would involve the applicant alone and would leave intact the general provision of the Commission revoking the compensatory amounts. It is,

accordingly, necessary to appraise the substance of this claim.

4. In support of his claim, the applicant in the first place contends that there has been an infringement of Article 7 of Regulation No 974/71 of the Council. That Article provides as follows: 'Partial or temporary use may not be made of the authorization provided for in this Regulation'.

It must, however, be borne in mind that this provision governs the application of fixed compensatory amounts in so far as they are in force for the group of products concerned and certainly does not have the effect of depriving the Commission of the right to revoke compensatory amounts when the conditions relating to the working of the common market organization and which, under the reservation expressed in the final recital of Regulation No 974/71 and to which I have already referred, are essential to justify application of compensatory amounts, no longer apply. The applicant further contends that, when the Commission revoked the compensatory amounts, it exceeded the limits of the implementing powers conferred on it by the Council.

It must be remembered that compensatory amounts were conceived as a purely temporary device designed to avoid the worst at a time when the international monetary system was changing from a pattern of stable rates of exchange to one in which they were liable to fluctuate. There is no doubt that, on a medium-term or a long-term view, the system of compensatory amounts is instrinsically calculated to disturb the unity of the agricultural market and to distort competition. Nevertheless, in the short term it is justified because it prevents any fluctuation in rates of exchange from having an immediate repercussion on agricultural prices, expressed in national currency; the prices of agricultural products, expressed in the currency of the country whose money is devalued or revalued, remain unchanged but, in order to avoid disturbances in the pattern of trade, Regulation No 974/71 of the Council temporarily authorizes the State whose money has appreciated in value to charge compensatory amounts on imports and to grant them on exports. Despite the length of time they have been applied, compensatory amounts must, accordingly, be regarded as exceptional measures which derogate from the system and for this reason, pending the emergence of a more developed Community system enabling the inconvenience, both of fluctuations and of compensatory amounts, to be avoided, they are justified only to the extent to which they are indispensable in preventing the worst, by eliminating any possibility that currency fluctuations may jeopardize the proper functioning of the common market organizations.

When the application of compensatory amounts is no longer indispensable in preventing disturbances of trade in the products concerned, when, namely, to employ the expression used in Regulation No 974/71 of the Council, the incidence of the monetary measures on the prices of basic products covered by intervention arrangements, though still in existence, is no longer likely to lead to difficulties, there is no doubt that the authority with power to decide that the compensatory amounts shall be applied to the group of prodcuts concerned has, even in the absence of an express provision to this effect, power to discontinue their application.

5. The applicant further maintains that unconditional revocation of these amounts, on the basis of which it had assumed commitments relating to the sale in third countries of 8 000 metric tonnes of goods, did not take account of its legitimate expectations and, furthermore, infringed the right it had acquired to have applied to it the system in force at the time when the export refunds were fixed in advance.

As the Court has already had occasion to point out, the monetary compensatory amounts introduced by the Community

as part of the common agricultural policy are not intended to provide extra protection for private parties in respect of export refunds but merely represent compensation for the harmful effects, due to departure from fixed exchange parities, of currency fluctuations on the working of the common market organizations, thus enabling uniformity of agricultural prices and of the market in such products to be maintained (Judgment of 24 October 1973 in Case 5/73, *Balkan,* [1973] ECR 1108).

Should it in principle be concluded from this that, in the absence of legislation providing for advance fixing of compensatory amounts (which, however, would scarcely be compatible with the real purpose of compensatory amounts, which is to compensate for currency fluctuations and which requires that the compensation should meet the actual currency situation at the time when the operation which gives rise to payment of the compensatory amount takes place) and, again, in the absence of appropriate transitional provisions, operators could not in any case claim to have applied to them the more favourable arrangements in force at the time when they undertook their commitments?

The general priciple that laws amending the rules which previously applied are, in the absence of provisions to the contrary, applicable to the future effects of situations arising under the rules previously in force is, according to the Judgment in Case 1/73, *Westzucker* v *Einfuhr- und Vorratsstelle für Zucker* [1973] ECR 723, limited by operation of law only in individual cases involving acquired rights. In such circumstances, the claim of the owner of the right could be satisfied not on the basis of the Community's non-contractual liability but rather in fulfilment of an intrinsic legal obligation. Where, however, a change does no more than run contrary to expectations, this really raises the question of the public administration's non-contractual liability for loss resulting therefrom to those subject to their direction only where the damage cannot be justified and is directly related to improper conduct on the part of the Community.

In contrast to an expectation based on a strictly subjective consideration, even if this arises from the circumstances or from the behaviour of the administration, an acquired right is the direct result of objective factors inherent in the provisions which in law govern the sector concerned. We have, however, seen that the purpose of compensatory amounts is not to provide further protection for operators in addition to the other methods of intervention provided for their benefit under the common market organizations, but that they are designed solely to permit those organization to continue functioning, well or otherwise, in spite of currency fluctuations which are liable to interfere with the way in which they work.

In order that, not for the direct benefit of individuals but to enable the common market organizations in agriculture to work properly, a compensatory amount may perform its task of correcting distortions arising from currency fluctuations, it must be capable of making up the difference between the currency at its parity declared to the International Monetary Fund, and the real exchange value of that currency, which should normally be calculated on the basis of the position which prevailed at the time of the operation taken into account when the compensatory amount was granted (in accordance with the arrangements enforced on the basis of Regulation No 974/71 of 12 May 1971, which remained in force until it was radically amended as a result of Regulation No 1112/73 of 30 April 1973). In contrast to what occurs in the case of export refunds, the advance fixing of monetary compensatory amounts is not the most convenient method of enabling this mechanism to carry out its function correctly; because of the rapid fluctuations which can occur in exchange rates, advance fixing can, in

fact, produce a loss or an unjustified windfall for the operator who speculates. Account must also be taken of the difference in purpose between an export refund and a compensatory amount. The refund is used to compensate for the difference between the higher Community price and the price of the product on the world market; at the time with which we are concerned the compensatory amount was, whenever this was necessary to enable the common market organizations to work, used to correct the differences between the official exchange rate of the currency concerned and its real exchange value in terms of the dollar. We are therefore faced with quite different and independent measures, which, means that, in the absence of express legislative provision, it would be quite impossible, by way of interpretation, to infer a definite entitlement to a compensatory amount solely on the ground that an export refund had been fixes in advance for the operator.

In the absence, therefore, of express provision, such as the Commission subsequently made, in general terms, for cereals under Regulation Nr. 837/72 of 24 April 1972 (OJ L 98 p. 10), whose effect was to entitle operators to have the previous rules applied to them if compensatory amounts were changed to their disadvantage, it is not possible to use advance fixing of the export refund as a basis for entitlement to be granted the compensatory amounts in force at the time when the advance fixing was made, because this would scarcely accord with the real purpose of compensatory amounts.

The rules thus described make it impossible to conclude, simply on the basis of the provisions governing the specific subject-matter, that a valid entitlement to a compensatory amount already existed at the time when the amount of the export fund was fixed in advance.

6. The question which remains to be considered is whether the general need to ensure that confidence is not misplaced and that dealings proceed on a secure basis may, in the present case, justify recognition that, by abolishing the compensatory amounts in fats and oils without adopting transitional measures designed to protect interested private parties who could reasonably have relied on receiving the compensatory amounts applied at the time when they concluded a contract of sale, the Commission committed a wrongful act or omission of such a nature as to make it liable for the losses which are a consequence of it.

Tough containing features which recall the question with which we were concerned in *Deuka,* Case 78/74, in which judgment was given on 18 March 1975, the question we have thus to answer shows a marked difference from it. This is because, in contrast to what could perhaps be concluded in that case, it is, as we have seen certainly not possible, bearing in mind the basic rules laid down by the Council, in the present case to recognize the existence of rights acquired on the basis of the same regulation, as the subject of amendment or of repeal. It is precisely because of the existence of rights of this kind which, under the arrangements previously in force, could be established on fulfilment of the formal requirements of Community legislation for the grant of denaturing premiums for common wheat, that the Court, by means of a corrective interpretation, which had the precise effect of preserving the validity of the regulation thus interpreted, was able to interpret the new arrangements in such a way as to safeguard any acquired rights which the Commission was under a legal obligation to protect.

7. The first condition on which it is possible to envisage such protection, in terms of an action for damages in respect of harm unlawfully caused to a private interest, is that it can be regarded as compatible with the objectives sought by the provision directly responsible for the loss.

Once this has been established, the next question to be examined would be whether, in failing to safeguard that interest, the Commission infringed any rule or principle of law in such a way as to make the Community liable for any loss.

To justify replying in the negative to the first of these two questions, it would not be sufficient to argue that compensatory amounts on exports could not remain in being without their essential counterpart, compensatory amounts on imports; nor, again, that, once decided upon, the revocation must take place without delay. To preserve the validity of situations based on legal transactions entered into in a definitive manner prior to the adoption of the new provisions is not necessanly inconsistent with these requirements. The general effect of Regulation No 837/72 is to ensure that, when compensatory amounts are changed to the disadvantage of those concerned, there is no departure from their expectations, by making it possible to apply on export the compensatory amount valid in the Member State concerned on the day on which the refund was fixed in advance. But before the Regulation was adopted, the Commission had already taken steps to prevent amendments of the provisions in force at the time when a contract was concluded from operating to the detriment of economic operators, in the form of a series of general or special measures designed to safeguard the interests and expectations of operators in the event of the compensatory amounts being changed to their disadvantage. This demonstrates that measures of this kind are not, generally speaking, incompatible with provisions designed to amend or abolish these compensatory amounts. In this connexion we must bear in mind Regulation No 1013/71 of the Commission of 17 May 1971 (OJ L 110, p. 8), which lays down detailed rules for application of Regulation No 974/71 of the Council concerning the introduction of compensatory amounts. In the implementing Regulation (No 1013, p. 71), the Commission exempts contracts concluded up to two days prior to its entry into force from the application of the compensatory amount on imports in cases where the compensatory amount would have different economic effects from those which it would have had if these monetary measures had not been introduced.

Subsequent to the events involved in the present case and after adoption for the products with which it is concerned of a special system of differential amounts to be levied or granted on processed or exported colza and rape seed, enabling allowance to be made for the incidence on seed prices of the actual exchange rates in the various Member States, the Commission, in Regulation No 2041/73 of 27 July 1973 (OJ L 207, p. 33), took account of the fact that, as a result of the new system of compensatory amounts, which entered into force on 4 January 1973, the differential amount in a Member State no longer reflected the relationship of its currency to the US dollar and that, when an operator had fixed a subsidy or refund in advance before entry into force of the new system of differential amounts, he might have suffered loss as a result of dollar parity changes at the time of transition from one system to the other. For these reasons, the Commission, on application from an interested party, continued to apply the old differential amount to all operations in respect of which an application for fixing of the refund or subsidy was made before the date of entry into force of the new system established under Regulation No 1356/73 of the Council (OJ L 141, p. 28).

Later, Regulation No 1608/74 of the Commission of 26 June 1974 (OJ L 170, p. 38) provided for the possibility of making allowance for the particular character and circumstances of individual operators in order to avoid the loss which the latter might suffer as a consequence of the effect of the monetary events on the fulfilment of

prior contractual commitments and for whom the monetary event involved an increased charge on imports or exports. A retrospective provision of the Regulation made the new arrangements in favour of operators applicable from 4 June of the previous year.

These various examples show that the Commission has not ignored the problem raised in the present case and that it has tried on more than one occasion to resolve it in such a way as to satisfy those requirements of equity to which, in the Regulations mentioned, it expressly referred. But it is clear that the fact that the Commission did not, in the present case, pay regard to considerations of pure equity is not enough to create any non-contractual liability on its part; the latter presupposes illegality, not just any harmful conduct, and where the question is concerned with damage arising from a legislative provision involving judgments in the field of economic policy, only a particularly flagrant infringement can make the institution liable.

8. When the public interest so requires, there can be no doubt that the interests of individuals, even if they form a group of some size, must take second place. But when, apart from mere book-keeping considerations, there is no need or point in sacrificing individual interests and frustrating legitimate expectations, may it be argued that, in the Community legal order, there exists a general principle which requires the institutions of the Community to adopt appropriate measures to safeguard those interests? I believe it would be dangerous to try and give a general answer to such a wide-ranging question. On the contrary, it can be answered more conveniently and satisfactorily as and when it arises in respect of well-defined sectors in the context of the conditions which led to adoption of the provision which changes the previous arrangements.

In order to stick as closely as possible to the circumstances of this case, regard must be paid to the reason which led to adoption of the Regulation of the Commission with which we are concerned (No 189/72) as it appears in the light of the explanations supplied by the defendant in the course of the proceedings. The Regulation declared it to be no longer essential to apply compensatory amounts in the sector concerned to prevent disturbances of trade because, as the Commission pointed out during the proceedings, 84 % of Community production had by then been or was in the process of being sold. The purpose of compensatory amounts is not to cover operators against the currency risks inherent in fluctuations in the rates of exchange but, as has been seen, solely to prevent the system of agricultural prices and, in particular, the working of intervention mechanisms from being compromised, which could easily occur as a result of speculative operations designed to profit from differences in exchange rates between States. This being the end in view, the Commission did not, in this respect, regard the small part of the internal harvest still remaining to be put on sale as constituting a real danger.

However, the abovementioned percentage of Community production which the Commission had declared to be no longer available for sale included a share of more than 30 % which, although capable of being regarded as already committed, because it had been the subject of advance fixing either in respect of export refunds or of supplementary aids, had not yet in fact been delivered to the purchaser. It is not known what proportion of this share was destined for export. However that may be, in respect of the remaining part of Community output, regard was paid to the fact that the compensatory amounts promised by the Community had produced the required effect, but nothing was done to meet the expectations entertained by concerns which had undertaken sales commitments in respect of which they had obtained advance-fixing certificates for

refunds. To rely on the fact that, whether it was large or small, that proportion of Community output had for all intents and purposes now gone outside the home market, in order to deprive it of the benefit of the compensatory amounts would appear to have little in common with the principles of fair dealing and good faith which should govern the attitude of a public authoritiy towards those subject to its control.

In the abovementioned statement of reasons given for Regulation No 837/72 which, whilst amending the system of monetary compensatory amounts, declares that the compensatory amount valid on the day on which the export refund was fixed in advance shall be applied, the Commission expressly acknowledged the elementary economic fact that the calculations of operators for whom the export refund had been fixed in advance are based on the granting not only of such 'refund' but also of the compensatory amounts.

When it is borne in mind that, as the Commission has explained, one of the objectives of compensatory amounts on colza exports was to maintain traditional patterns of trade, it may seem hardly consistent to take notice that this objective has been achieved thanks to the fact that operators have undertaken commitments based on advance fixing for exports and, at the same time, to prohibit payment of those amounts to persons who had relied upon receiving them when undertaking those sales commitments which the Commission had taken into account when deciding it was time to abolish compensatory amounts. In other words, the Commission had those transactions in mind; it is just because they had been concluded that the Commission was able to abolish compensatory amounts. But if such transactions had played a decisive role in determining that a stage had been reached in the sale of Community products which justified the abolition of compensatory amounts, it would be logical to draw the conclusion therefrom that such abolition should apply solely to those products which had not yet been placed on the market, and not to those whose marketing was taken into account when it was considered to be no longer necessary to grant compensatory amounts on exports.

There is, therefore, a discernible inconsistency between the underlaying reason for the provision and the fact that no account was taken also in another respect of that part of Community output which, being for all intents and purposes committed for export, was an important element in building up the economic situation which led to the decision to abolish compensatory amounts.

I have, of course, no intention of questioning the need for or the timing of abolition by the Commission of compensatory amounts in respect of the products concerned, not only because almost the whole of the current crop grown in the Community was already virtually disposed of but also because the common market in this sector showed a constant deficit. The question with which we are faced is simply whether liability can arise from a straightforward repeal which (without this being necessary for the achievement of the purpose behind the provision for repeal) also covers that part of Community output which, although virtually disposed of because it had been a subject of contractual commitments and of advance-fixing of export refunds and, as such, was taken into account by the Commission in deciding it was time to repeal the compensatory amounts, could not yet have actually been the subject of payment of these amounts as it had not yet been exported.

Can the inconsistency which this implies in the provision for repeal between the considerations which led to it and the absence of transitional measures safeguarding the expectation of exporters for whom an export refund had been fixed in advance, be sufficient

ground on which to base the Community's non-contractual liability towards the applicant?

Under the precedents established by the Court, the question could be answered in the affirmative only if such behaviour has to be regarded as a particularly flagrant infringement of a superior principle of law designed to protect individuals.

The exceptional nature of the machinery of compensatory amounts is of particular relevance here because it constitutes in itself an exception to the system of single prices in the Community and it is, accordingly, justified only to the extent which is strictly necessary to avoid those difficulties which have been described.

In the circumstances, therefore, the absence of transitional measures to accommodate interests similar to those advanced by the applicant and whose protection is, as we have seen, not a specific object of the compensatory amounts system, does not seem to infringe the general principle of proportionality.

Failure to protect a mere expectation based on an exceptional arrangement of this kind could not in itself therefore constitute a wrongful act creating liability. Even if the lack of consistency between such failure to provide protection and the reason which led to the provision objected to resulted in vitiating the legality of the instrument, it would nevertheless, not be possible to establish the non-contractual liability of the Community if there has been no infringement of a superior prinicple of law designed to protect individuals.

The distinction between the illegality of an act and its capacity to create non-contractual liability on the part of its author is strictly maintained in the Community legal order in that, as the Court has already indicated, not every illegality can give rise to liablility. If it were otherwise, the recognized right of private parties, on the basis of compensation for demage incurred by them as a result of a Community regulation, to move the Court for relief, which for practical purposes is the same as that which they would obtain from annulment of the act concerned, would amount to a licence for individuals to circumvent the rigid limitations of public policy which Article 173 of the Treaty imposes on actions brought by individuals against legislative acts.

Even if, in theory, a logical flaw in a provision of general application, such as has been found in the provision for straightforward repeal of compensatory amounts in the sector concerned, is capable of affecting its validity, this does not constitute an infringement of a superior principle of law which also constitutes a specific safeguard for individual interests.

For these reasons, the applicant firms claim for damages must be regarded as unfounded.

The application must, therefore, be dismissed. The applicant must pay the costs.