applicable is inherent in the system itself, and cannot be considered, on such grounds, as giving the rules a retroactive effect.

2. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulations Nos 648/73 and 905/73.

Lecourt Kutscher O'Keeffe Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart Capotorti

Delivered in open court in Luxembourg on 7 July 1976.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 22 JUNE 1976

My Lords,

This case is concerned with the validity of a Regulation of the Commission dated 23 March 1973 fixing, or purporting to fix, certain reductions to be made in the monetary compensatory amounts applicable in particular to trade in beef and veal. The case is in large part a replay of Case 46/75 *IBC* v *Commission* (not yet reported) in which I delivered my opinion on 17 December 1975 and the Court delivered judgment on 27 January 1976. There is however this important difference that, whereas *IBC* v *Commission* was an action for damages purportedly brought under Article 178 of the Treaty, the present case comes to the Court by way of a reference ordered under Article 177 by the Guidice Conciliatore of Rome. In *IBC* v *Commission,* the Court held the action inadmissible and did not need to deal with the substantive arguments. Here there is no question of the reference being inadmissible. Another difference is that, in *IBC* v *Commission,* a question as to the possible invalidity of the Regulation in so far as it was retroactive, was raised too late to be considered at all, whereas here that question is expressly referred to the Court by the Guidice Conciliatore.

Your Lordships will remember that monetary compensatory amounts (which I will call for short 'm.c.a.'s') were introduced by Council Regulation (EEC)

No 974/71 of 12 May 1971, following the widening of the margins of fluctuation for the currencies of some Member States.

Article 1 (1) of that Regulation, as replaced by Article 2 of Council Regulation (EEC) No 509/73 of 22 February 1973, provides that a Member State whose currency has increased in value beyond the fluctuation margin permitted by international rules in force on 12 May 1971 shall charge m.c.a.'s on imports and grant them on exports of agricultural products and that, conversely, a Member State whose currency has decreased in value beyond the margin so permitted shall charge m.c.a.'s on exports and grant them on imports of such products. Italy is, of course, a country whose currency has decreased in value, so that it grants m.c.a.'s on imports.

By Article 3 of Regulation No 509/73 there was inserted in Regulation No 974/71 a new Article 4a, which is, so far as material, in the following terms:

'1. In trade with third countries, compensatory amounts ... granted on imports shall be deducted from the import charge ...
2. In trade between the Member States and with third countries, the compensatory amounts applicable due to the decrease in value of the currency concerned may not be higher than the charge on products imported from third countries.' (OJ L 50 of 23. 2. 1973)

The purpose of this provision, as was explained by the Commission in its written observations, was to prevent imports from third countries coming onto the Community market at below world market prices.

Article 6 of Regulation No 974/71 provides that detailed rules for the application of that Regulation, 'which may include other derogations from the regulations on the common agricultural policy' shall be adopted in accordance with the 'Management Committee procedure' laid down in each of the Regulations on the common organizations of agricultural markets. Your Lordships will have it in mind that, under that procedure, the Commission is empowered to adopt measures having immediate effect, subject to review by the Council if they are not in accordance with the opinion of the relevant Management Committee. In the case of beef and veal that procedure is laid down by Article 27 of Council Regulation (EEC) No 805/68 of 27 June 1968, which established the common organization of the market in those products.

On 1 March 1973, in exercise, or purported exercise, of the power conferred on it by Article 6 of Regulation No 974/71, the Commission adopted Regulation (EEC) No 648/73. This did two things. First it repealed and re-enacted in consolidated form the provisions of earlier Regulations of the Commission laying down detailed rules for the application of m.c.a.'s. Secondly, by Article 6, it introduced provisions designed to give effect to paragraph (2) of the new Article 4a of Regulation No 974/71.

Article 6 of Regulation No 648/73 read as follows:

'1. For the purposes of applying Article 4a (2) of Regulation (EEC) No 974/71 the Commission shall fix the amounts by which the 'monetary' compensatory amounts are to be 'adjusted'.
2. The amounts fixed pursuant to paragraph 1 shall be altered at regular intervals if this is rendered necessary by changes in the charge on imports from third countries.' (OJ No L 64 of 9. 3. 1973)

Regulation No 648/73 was published in the *Official Journal* on 9 March 1973 and came into force three days later.

Also on 9 March 1973 there was published in the *Official Journal*

Regulation (EEC) No 649/73, which the Commission had adopted on 1 March 1973. This fixed or purported to fix, by reference to annexes, the m.c.a.'s applicable for a period beginning on 26 February 1973. It was, by Article 1, expressed to do so 'Without prejudice to the provisions of Article 4a (2) of Regulation (EEC) No 974/71'. It entered into force on the day of its publication.

On 5 March 1973 the Commission adopted Regulation (EEC) No 741/73, which altered the m.c.a.'s by prescribing new annexes for Regulation No 649/73. Regulation No 741/73 entered into force on 19 March 1973, the day of its publication in the *Official Journal,* but it was expressed to apply from 5 March 1973.

On 23 March 1973 the Commission adopted Regulation (EEC) No 905/73 fixing, or purporting to fix, pursuant to Article 6 of Regulation No 648/73, the amounts by which the m.c.a.'s fixed by Regulation No 649/73 and Regulation No 741/73 were to be adjusted in order to give effect to Article 4a (2) of Regulation No 974/71. Regulation No 905/73 was expressed to enter into force on the day of its publication in the Official Journal — in fact 7 April 1973 — but the amounts thereby fixed were expressed to be applicable as from 26 February 1973 and 5 March 1973 respectively.

This case is concerned with an importation effected on 22 March 1973, that is to say after Regulations Nos 648/73, 649/73 and 741/73 had entered into force but before Regulation No 905/73 had even been adopted. It was an importation of 569 sacks of boned forequarters of beef from the Argentine effected by the Plaintiff in the proceedings before the Ufficio di Conciliazione of Rome, namely the Industria Romana Carni e Affini S.p.A.

At that time the only charge on such an importation was a customs duty of 10 % *ad valorem.* The total value of the beef imported by the plaintiff was Lit. 15 635 670 so that that charge came to Lit. 1 563 570.

According to the plaintiff the rate of m.c.a. applicable to the importation was Lit. 114 ·09 per kg and the total net weight of the beef in question 19 800 kg, so that the actual m.c.a. was Lit. 2 258 982. This, the plaintiff claims, should, under Article 4a of Regulation No 974/71, have been set off against the customs duty, leaving nothing to be paid by the plaintiff.

But the Italian customs authorities, in pursuance or purported pursuance of Regulation No 905/73, reduced the m.c.a. to a figure less than that of the customs duty, thereby leaving Lit. 56 790 to be paid by the plaintiff. The plaintiff asserts that it is entitled to repayment of that sum but, in order to keep its claim within the limit of the jurisdiction of the Ufficio di Conciliazione, limits it to Lit. 50 000.

Essentially the plaintiff puts forward two contentions.

The first is that there is a general principle common to the laws of all the Member States preventing the retroactive application of legislation. Regulation No 905/73, which came into force on 7 April 1973 could not therefore, the plaintiff says, apply to an importation effected on 22 March 1973.

The plaintiff's second contention is that Regulation No 905/73 and Article 6 of Regulation No 648/73 (in implementation of which Regulation No 905/73 was adopted) were in any event wholly void. The grounds relied on by the plaintiff in support of this contention substantially echo those relied on by the Applicant in *IBC* v *Commission.*

Four questions are referred to this Court by the Guidice Conciliatore and they reflect the contentions of the plaintiff.

Indeed, as the order for reference makes clear, they were actually formulated by the plaintiff, at whose instance they were referred to this Court. The first question raises the retroactivity point. Each of the other three in terms queries the validity of Regulations Nos 905/73 and 648/73, even in so far as the former was not retroactive, on one of the grounds suggested by the plaintiff. So far as Regulation No 648/73 is concerned, I take the questions to be intended to relate only to Article 6.

I have, my Lords, come to the conclusion that, save as regards one point, no useful purpose would be served by my dealing in detail with the submissions of the plaintiff in support of its second contention — in other words with the second, third and fourth questions referred to the Court by the Guidice Conciliatore. Those submissions, though presented in a different order, and to some extent with a different emphasis, were, as I have indicated, in substance the same as those presented on behalf of the applicant in *IBC* v *Commission.* I gave my reasons for rejecting them in the Opinion that I delivered in that case and I would, I think, be taking up Your Lordships' time unduly if I were now to repeat myself. As was inevitable, the argument put forward on behalf of the plaintiff in this case consisted in large part of courteous but firm criticism of what I said in *IBC* v *Commission.* I hope that I shall not be thought to fail to match that courtesy if, in the main, I confine myself to saying that the argument has not persuaded me that I was wrong. Indeed it has fortified me in the view that I was right.

The one point with which I must deal is this.

Your Lordships will remember that, both in *IBC* v *Commission* and in this case, the Commission explained how it fixed the adjustments to be made to the m.c.a.'s applicable in trade in beef and veal, and why it did so in that manner. Briefly, there was a difference between beef and veal on the one hand and all other agricultural products on the other, consisting in the fact that, in the case of beef and veal, the charge on imports from third countries was (or, in certain circumstances, included) an *ad valorem* customs duty, whereas in the case of all other relevant products the charges on such imports (mostly levies) were fixed by reference to a unit of weight or the like, without regard to value. This meant that, in the case of products other than beef and veal, there was no difficulty in calculating the amount by which any m.c.a. must be reduced in order to ensure that, in compliance with Article 4a (2) of Regulation No 974/71, it did not exceed the charge on imports from third countries. The m.c.a. and that charge being both fixed in the same terms, they could readily be compared. In the case of beef and veal, however, the customs duty per unit of weight would vary according to the value of the goods. This would have given rise to no problem if m.c.a.'s had been applicable only to imports from third countries, since, in the case of such imports, each consignment of goods must be valued and the customs duty on it computed. But, said the Commission, no such valuation or computation was called for in the case of exports to third countries or, more important still perhaps, in the case of intra-Community trade. To have required the customs authorities of Member States to value each consignment of goods involved in such transactions, merely in order to see whether any and, if so, what adjustment to the m.c.a. applicable to that consignment was called for, would have imposed an undue burden on those authorities and created objectionable barriers to trade. The Commission concluded that the only solution, albeit not an entirely satisfactory one, was for the adjustments to the m.c.a.'s to be computed in the case of beef and veal on a flat-rate basis, taking as the starting point of their computation, not the actual value of the goods comprised in each consignment, but the 'import

prices' calculated by the Commission under Article 10 of Regulation No 805/68. (Your Lordships remember that that Regulation established the common organization of the market in beef and veal, and that Article 10 provided for the calculation 'on the basis of quotations recorded on the most representative markets of third countries' of 'import prices' which were to be compared with the Community 'guide prices' in order to determine whether at any time levies should be imposed on imports from third countries in addition to the customs duty.) The Commission further concluded that artificial deflections of trade might occur unless the flat-rate adjustments to m.c.a.'s thus computed applied to all transactions in beef and veal, including imports from third countries.

In *IBC* v *Commission* the applicant attacked the Commission's reasoning on the ground (among others) that goods exported to third countries and goods imported from or exported to other Member States, had to be valued anyway for VAT purposes. The applicant did not however substantiate that assertion. The Commission met the point by saying that, leaving aside the question whether the assertion were true, goods of Community origin or in free circulation in a Member State have, because of Community preference, a higher market value than goods intrinsically the same imported from third countries, so that, if like was to be compared with like, a different method of valuation than any used for VAT purposes would have to be applied to the former in order to establish the amount of the charge that they would have borne if imported from a third country.

The plaintiff in the present case, in renewing that attack on the Commission's reasoning, sought to do two things. The first was to demonstrate, by reference to the Council Directives of 11 April 1967 relating to the introduction of VAT (67/227/EEC and 67/228/EEC) and to the national legislations of some of the Member States, the truth of the assertion that all goods crossing the frontier of any Member State in either direction had to be valued for VAT purposes. The second was to show that, from the value for VAT purposes of goods of Community origin or in free circulation in the Community, the charge that they would have borne if imported from a third country could be ascertained by a simple algebraic formula.

As regards the first of those points, it did not seem to me that the demonstration attempted by the plaintiff was wholly successful, if only because the Directives in question, whilst they clearly envisage the valuation of exports in certain circumstances, do not seem to require it in all circumstances; and because the plaintiff's examination of the legislations of Member States was far from exhaustive. But perhaps this, in itself, does not matter, because, at the hearing, the Commission in effect accepted that all the Member States require the value of all goods either imported or exported to be declared, if not for VAT purposes at least for statistical purposes. What the Commission emphasized however was that, except as regards goods imported from third countries, which have to be valued, for the purpose of applying the Common Customs Tariff, according to the Community rules prescribed by Council Regulation (EEC) No 803/68 of 27 June 1968 on the valuation of goods for customs purposes and Commission Regulation (EEC) No 375/69 of 27 February 1969, there were divergences both in the bases of valuation adopted by Member States, whether for VAT or for statistical purposes, and in the extent to which their customs authorities were required to check the values declared by traders. So there would be no common starting point for the application of the algebraic formula suggested by the plaintiff, even if that formula were otherwise acceptable, which the Commission did not concede.

It seems to me that on this point the Commission is once again right, at least to this extent that the lack of uniformity in the practice in the Member States over the valuation of imports and exports, other than imports from third countries, meant that it was legitimate for the Commission to decide, under the powers conferred on it by Article 6 of Regulation No 974/71, that, rather than leave the adjustments to m.c.a.'s to be worked out by the Member States, it would fix flat rate adjustments to be applied uniformly by them all.

So I turn to the retroactivity point.

As to this, it is to be observed that, whilst this Court has, in quite a number of cases, had to consider problems related to the question of the possible retroactive application of acts of the Community Institutions, it has never, so far as I can find, defined the limits of such possible retroactive application, much less decided the precise question that arises here, which is, in what circumstances, if any may the Commission expressly provide for the retroactive application of a regulation that it adopts in the exercise of powers conferred on it by a regulation of the Council? That question was in fact raised in Cases 63/69 and 64/69 *Compagnie française commerciale et Financière* v *Commission* [1970] 1 ECR 205 and 221, but the Court held that the applications in those cases, which were brought by a private person under Article 173 of the Treaty, were inadmissible, so that the question was left unanswered.

Two authorities were relied upon by the Commission. The first was Cases 42 and 49/59 *SNUPAT* v *High Authority* (Rec. 1961 at pp. 159-161). There the Court was concerned with the revocability of an administrative decision which was unlawful when taken, a matter which seems to me remote from the present question. It is however noteworthy that the Court there recognized that, even in such a case, revocation might not be possible if innocent parties had relied on the decision. The second authority was a dictum of Mr Advocate-General Roemer in Cases 106 and 107/63 *Toepfer* v *Commission* [1965] 1 ECR at p. 428, where he said that 'measures of such a radical and sweeping nature as calling a halt to imports on a retroactive basis must be limited to extreme cases in which every other measure appears ineffective'. There the act in question was a decision of the Commission taken under powers conferred by a Council regulation. It was retroactive only in the sense that it affected applications for import licences that had been lodged but not yet granted. The Court held it to be invalid on other grounds.

There are of course a number of cases in which the Court has had to consider the effects of the general principle that new legislation applies, unless otherwise provided, to the future consequences of situations created before its enactment. I need not take up Your Lordships' time with a discussion of those cases or of cognate cases such as Case 17/67 *Neumann* v *Hauptzollamt Hof* [1967] ECR 441, where the Court was concerned (at pp. 455-456) with the consequent need for the Institutions, in the interests of legal certainty, to exercise reasonably the power conferred on them by Article 191 of the Treaty to provide for a regulation to enter into force on the day of its publication, or Case 74/74 *CNTA* v *Commission* [1975] ECR 533, where it was concerned (at pp. 549-551) with the consequent need in certain circumstances for transitional provisions to protect legitimate expectations. Such problems differ from that which arises in the present case, where we are concerned with a provision that was starkly retroactive.

A case that I must mention, I think, is Case 37/70 *Rewe-Zentrale* v *Hauptzollamt Emmerich* (Rec. 1971 (1) p. 23), where the Court held valid, notwithstanding their express retroactivity, certain decisions of the Commission, made under Article 226 of

the Treaty, authorizing the Federal Republic of Germany to take protective measures, including the imposition of a countervailing charge on imports from other Member States, following the revaluation of the DM in October 1969. From a superficial reading of the Court's reasoning (at pp. 36-37) it might be deduced that all that was necessary to justify the retroactivity of an act was that it should be shown that, but for such retroactivity, the act would have failed to achieve its object. Besides the fact that Case 37/70 was concerned with decisions and not with regulations (and there may be a material difference between them), two considerations lead me to think that no such general rule can be deduced from it.

First, Article 226 (which was applicable only during the transitional period) was, as its wording indicates, essentially an 'emergency' provision to be invoked only when 'serious' difficulties arose, liable to bring about 'serious deterioration in the economic situation of a given area'. The measures to be authorized by the Commission were to be only those that it considered 'necessary' and, in so far as they involved derogations from the rules of the Treaty, they were to be authorized only 'for such periods as are strictly necessary in order to attain the objectives referred to'. In the words of Mr Advocate-General Dutheillet de Lamothe (at p. 43) it was 'un véritable "droit des temps de crise" '. There might well be implied in such an Article a power to legislate retroactively if that were necessary to attain the desired objective.

Secondly, the powers conferred on the Commission by Article 226 were conferred on it directly by the Treaty, and not by an act of the Council, so that, in exercising those powers, the Commission was not enacting subordinate legislation. This, as I shall show, may make a difference.

That being, I think, all the guidance that is to be found in the authorities in this Court, I turn to the European Convention on Human Rights and to the laws of the Member States.

The only provision about retroactivity in the European Convention on Human Rights seems to be Article 7, which provides, by paragraph (1):

'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.'

There are similar provisions, applicable only in the sphere of criminal law, in the Constitutions of three of the Member States, namely Article 103 (2) of the Constitution of the Federal Republic of Germany, Article 15 (5) of the Constitution of Ireland and Article 25 of the Constitution of Italy.

We are not however here concerned with legislation imposing criminal liability, but with something akin to legislation imposing or increasing a tax: so far as importers into Italy were concerned, a reduction in the m.c.a.'s could entail an increase in customs duty. I say 'akin to' because I do not overlook the distinction that is to be drawn between fiscal legislation properly so called and legislation giving effect to the common organization of agricultural markets.

In the sphere of civil law there is no express provision in the Constitution of any Member State putting a limit on the extent to which legislation may be retroactive.

The Bundesverfassungsgericht has however held it to be implicit in the German Constitution that a statute may not operate retroactively so as to defeat legitimate expectations. In so far as it purports so to do it will be held invalid.

(See for instance BVerfGE, Bd 30, 367, 385-386).

The same rule must in my opinion apply in Community law. The Court has already said in general terms that it cannot uphold measures incompatible with fundamental rights recognized and protected by the Constitutions of Member States (Case 4/73 *Nold* v *Commission* [1974] ECR at p. 507). I would be inclined to refine on this and to say that a fundamental right recognized and protected by the Constitution of any Member State must be recognized and protected also in Community law. The reason lies in the fact that, as has often been held by the Court (see for instance Case 6/64 *Costa* v *ENEL* [1964] ECR at p. 593), Community law owes its very existence to a partial transfer of sovereignty by each of the Member States to the Community. No Member State can, in my opinion, be held to have included in that transfer power for the Community to legislate in infringement of rights protected by its own Constitution. To hold otherwise would involve attributing to a Member State the capacity, when ratifying the Treaty, to flout its own Constitution, which seems to me impossible. But, in any case, the principle that the Community Institutions may not legislate so as to defeat legitimate expectations is already well established by decisions of this Court. The present is but a particular application of it. Indeed, if that principle could apply in circumstances such as those of the *CNTA* case (already cited) *a fortiori* must it apply where legislation is retroactive in the full sense.

It seems to me however that to hold that the Community Institutions may not legislate retroactively so as to defeat legitimate expectations may not in itself be enough to enable the plaintiff to succeed in the present case. As was pointed out by the Bundesverfassungsgericht in a Judgment of 19 December 1961 (BVerfGE Bd 13, 261, 272-273) there is no legitimate expectation to be protected where, owing to the state of the law at the time to which the new legislation retroacts, the enactment of some such legislation was then foreseeable. Here, the Commission submitted with some force, no-one could legitimately expect on 22 March 1973 (the date of the importation in question) that reductions in the m.c.a.'s fixed by Regulations Nos 649/73 and 741/73 would not be prescribed; for, not only did Article 6 of Regulation No 648/73 provide for them to be prescribed, but Article 1 of Regulation No 649/73 expressly stated that the m.c.a.'s were thereby fixed 'Without prejudice to the provisions of Article 4a (2) of Regulation (EEC) No 974/71'.

This case cannot, however, in my opinion be decided by reference only to the principle of the protection of legitimate expectations.

In the Member States other than Germany, where there is no constitutional principle as to the retroactive application of legislation in the sphere of civil law, a distinction is drawn between statutes and subordinate legislation.

As regards statutes, the well-established rule in all these Member States is that, whilst Parliament has power to legislate retroactively, there is a presumption against its doing so. A statute will accordingly be held to have retroactive effect only where its terms so require either expressly or by necessary implication. There is a remarkable unanimity in the judgments of the superior Courts of the different Member States on this. The rule is uniform, though its sources differ. Thus in Belgium the rule derives from Article 2 of the Civil Code, which provides 'La loi ne dispose que pour l'avenir; elle n'a point d'effet rétroactif'. This provision, having only statutory force, does not bind the Legislature; but it binds the Courts in so far as the Legislature has not enacted

an exception. There is a similar provision in Article 2 of the French Civil Code, in Article 11 of the Preliminary Provisions of the Italian Civil Code, in Article 2 of the Civil Code of Luxembourg and in Article 4 of the Dutch Wet Algemene Bepalingen. In other countries the rule has been evolved by the Courts without the assistance of any text. Nowhere is it more firmly established than in England and in Scotland. Of course the rule is subject to exceptions. Thus it is variously held not to apply to statutes that are declaratory of the previous law, to statutes concerned with procedure, and to statutes conferring benefits on private persons. It may well be that there is not the same uniformity as between the laws of the Member States with regard to the exceptions as there is with regard to the rule itself. But this is immaterial for present purposes. In particular it is not necessary here to consider whether Regulation No 905/73 could be held invalid on the ground of retroactivity in so far as it operated to reduce the m.c.a.'s payable by Italian exporters, and thereby conferred a benefit on them.

As regards subordinate legislation, there is not quite the same unanimity. The most widely accepted rule, which is also the most logically consistent with the rule applying to statutes, is that subordinate legislation may only be given retroactive effect if and in so far as the enabling statute authorizes it, either expressly or impliedly. This appears to be the law in Belgium (see for instance the Judgment of the Conseil d'Etat in *De Paepe,* No 13,760 of 28 October 1969, A.A.C.E. p. 914), in Denmark (see M. Sørensen, 'Statsfortfatningsret', 2nd Ed., p. 218), in France, where however there is another rule, which I shall mention in a moment, applicable in the economic sphere in certain circumstances (see P. Devolvé, 'Le Principe de Non-Rétroactivité dans la Jurisprudence Economique du Conseil d'État', in 'Mélanges offerts à Marcel Waline, Le Juge et le Droit Public', Tome II, p. 357-360), in Italy (see Landi & Potenza 'Manuale di Diritto Amministrativo', 5th Ed., p. 41) and in Ireland (see the Judgment of the Supreme Court in *Re McGrath and Harte* [1941] I.R. 68, at p. 77). It is certainly the view generally held in all parts of the United Kingdom. I believe that the reason why there is no judicial authority about it there is that the rule is so well accepted that the draftsmen of subordinate legislation are careful not to depart from it. A discordant note is sounded by the law of the Netherlands, where it has been held by the Hoge Raad that secondary legislation may be retroactive unless the enabling statute expressly forbids it. The decisions of the Hoge Raad to that effect have however been criticized by learned writers and not followed by some lower Courts, which have applied the more generally accepted rule. In Luxembourg the law is said to be uncertain (see P. Pescatore, 'Introduction â la Science du Droit' p. 317).

Finally I should mention that, as I understand it, the law of Germany on this point is similar to that in most of the other Member States inasmuch as, by virtue of Article 80 (1) of the Constitution, a statute authorizing the enactment of subordinate legislation must set out the content, purpose and scope of such authorization.

The special French rule to which I referred applies where it is possible to identify a period, such as a marketing year, having a certain unity and indivisibility. The Conseil d'État has held that in such a case, subordinate legislation may, in certain circumstances, retroact to the beginning of that period. One can envisage that rule being applied, where appropriate, in the context of Community legislation. But it does not seem to me relevant to the circumstances of the present case.

Leaving aside, then, that special rule, the question is, I think, where the guidance afforded by the laws of the Member

States leads us as regards Community law.

As to this, I have for my part no doubt. Where a provision of the Treaty directly authorizes the Council or the Commission to legislate, the analogy is with a national Parliament empowered to enact statutes. Subject to the limitation that legitimate expectations may not be defeated, the Institution concerned is free to legislate retroactively, but it will be presumed not to do so. Its acts will be held to have retroactive effect only if and in so far as their terms evince, either expressly or by necessary implication, a clear intention that they should have that effect. Where however the Commission needs the authority of the Council to legislate, it can only do so within the bounds of the authority expressly or by necessary implication conferred on it by the Council. It cannot therefore legislate retroactively unless thereunto so authorized by the Council.

Applying that test to the the present case, it is clear that neither Article 6 of Regulation No 974/71 nor Article 27 of Regulation No 805/68 contains any express power for the Commission to legislate retroactively. Can the Council be held to have conferred such a power on the Commission by necessary implication? I think not. There is nothing in the nature of m.c.a.'s or of adjustments to them that makes it necessary for the Commission to have power to fix them retroactively.

The Commission explained in its written observations that the reason why it had, in the period February — March 1973, resorted to retroactive legislation, was that events were occurring so fast that its staff had difficulty in keeping up with them. On 1 February the agricultural regulations became applicable to the new Member States, on the 13 there was a devaluation of the dollar, on the same day Italy withdrew from the Basle agreement, on 1 March certain exchange markets were closed, and on 19 March there was a revaluation of the DM. I do not underestimate the strain that these events, happening in quick succession, must have put on the Commission's staff. But the fact that they occurred cannot lead to the conclusion that the Council must at an earlier date have empowered the Commission to legislate retroactively as to m.c.a.'s or as to adjustments to them. Too often at the national level the power to legislate retroactively is used, not because its exercise is called for by the nature of the problem that is being dealt with, but simply in order to make life easier for the Executive. It would be deplorable if that practice were to spread to the Community level.

I am therefore of the opinion that Your Lordships should answer the questions referred to the Court by the Guidice Conciliatore of Rome by declaring that —

1. Regulation No 905/73 was invalid in so far as it purported to apply to importations into Italy taking place before 7 April 1973;

2. Otherwise, consideration of those questions has evinced no reason for thinking that that Regulation or Regulation No 648/73 was invalid.