2498/74 of the Council, in respect of quantities of butter not yet removed in the proper manner from storage on that date, namely 7 October 1974.

4. The reasons on which a piece of legislation is based may appear not only from its own wording, but also from the whole body of the legal rules governing the field under consideration.

5. Regulation No 2517/74 is valid.

In Case 92/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Ireland for a preliminary ruling in the action pending before that court between

AN BORD BAINNE CO-OPERATIVE LIMITED (The Irish Dairy Board)

and

THE MINISTER FOR AGRICULTURE

on the interpretation and the validity of certain provisions of Regulations No 685/69 and No 2517/74 of the Commission concerning private storage aid for butter and cream,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. M. Donner and A. O'Keeffe, Judges,

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

gives the following

JUDGMENT

Facts and issues

The facts, the procedure and the written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Article 6 (2) of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the

market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) established, within the framework of the intervention scheme, a system of aid for the private storage of butter and cream produced in the Community.

The aid is granted in respect of quantities stored at the expense of the producer and in respect of butter manufactured during a limited period immediately prior to the commencement of storage. The aid is designed essentially to counteract seasonal price fluctuations and to provide for a temporary withdrawal from the market.

The twelfth recital in the preamble to Regulation No 985/68 of the Council of 15 July 1968 laying down general rules for the intervention on the market in butter and cream (Official Journal, English Special Edition 1968 (I), p. 256) states that, "to ensure uniformity in the Community, provisions should be made for a Community form of storage contract and a uniform method of calculating the amount of aid according to the cost of storage and market developments". The intervention agency is bound to conclude such a contract with any interested party capable of fulfilling the prescribed terms. Those terms are established in detail by the Member State concerned and annexed to the various contracts as "Standard Conditions". There are, however, a number of provisions which under the Community rules have to be incorporated.

The amount of aid is decided by the Community having regard to the storage costs and foreseeable developments in the prices for fresh butter and stored butter. It is made up of several elements, defined in Article 24 of Regulation No 685/69 of the Commission (Official Journal, English Special Edition 1969 (I), p. 194), as amended by Regulation No 658/74 of the Commission (Official Journal 1974 L 80, p. 3).

Article 27 of Regulation No 685/69 stipulates that for calculation of aid for the storage of cream, the quantities of (pasteurized) cream shall be converted into "butter equivalents" by multiplying the fat content of the cream by 1.25.

Article 26 of the same regulation provides that aid for private storage may be granted only if the duration of storage is at least four months, and Article 28 of the regulation provides that, except in respect of the 1968/69 marketing year, the storage period shall run from 1 April to 30 September of the same year, whereas the period for removal from storage runs from 1 November to 31 March of the following year. Finally, Article 29, which in its original version dealt with the case of an increase in aid owing to a decrease in the buying-in price for butter provided, in the version as amended by Regulations No 880/69, No 1064/69 (Official Journal, English Special Edition 1969 (I), p. 218 and p. 235) and No 603/70 of the Commission (Official Journal, English Special Edition 1970 (I), p. 169), as follows:

"Should the buying-in price for butter change, the aid specified in Article 24 in respect of quantities of butter and of cream expressed as butter equivalent covered by a storage contract and taken into store before the date on which the change in the buying-in price became effective, and remaining in storage when the price changes, shall be:

(a) increased by an amount equal to the decrease in the buying-in price, or

(b) decreased by an amount equal to that of the increase in the buying-in price."

Then the following subparagraphs were added to the article by Regulation No 2517/74 of the Commission of 3 October 1974 (Official Journal 1974 L 269 p. 24):

"If the increase in the buying-in price is higher than the level of aid, no aid shall be granted.

The provisions of the preceding subparagraphs shall also apply in the event of a change in the buying-in price for butter, expressed in national currency, applied by the intervention agency concerned".

That regulation, published on 4 October 1974, entered into force on 1 October 1974.

By Regulation No 2496/74 of the Council of 2 October 1974 (Official Journal 1974 L 268, p. 1), the intervention prices (which correspond to the intervention agencies' "buying-in prices") applicable in agriculture for the 1974/75 marketing year were amended in relation to those fixed by Regulation No 663/74 of the Council of 28 March 1974 (Official Journal 1974 L 85, p. 52). As regards butter in particular, the intervention price was raised, in the case of Ireland, from 163.40 to 170.43 units of account per 100 kg. Thereby, the intervention price per long ton of butter rose from 1 660.14 to 1 731.57 units of account. That regulation entered into force on 7 October 1974.

2. Wherever transactions to be carried out within the framework of the common agricultural policy require that the currencies of the new Member States should be converted into another currency or into units of account, the rate of exchange to be applied for the purposes of that conversion is established by Community regulations.

Regulation No 222/73 of the Council of 31 January 1973 (Official Journal 1973 L 27, p. 4) provided that the rate of exchange to be applied for Ireland was equal to the representative conversion rate for the currency of that State (at that time: £1 Irish = 2.1644 units of account). That rate was amended by Regulation No 2498/74 of the Council of 2 October 1974 (Official Journal 1974 L 268, p. 6) and lowered to 1.9485 units of account per £1 Irish.

That regulation, like the aforesaid Regulation No 2496/74, applied as from 7 October 1974.

3. An Bord Bainne Co-operative Limited (The Irish Dairy Board) is a co-operative society with limited liability incorporated under Irish law. It carries on the business of purchase, marketing and sale of milk and milk products, including butter and cream.

Under and pursuant to five private storage contracts entered into with the Irish Minister for Agriculture — who is the national intervention agency for the purposes of the common agricultural policy — the said co-operative society held certain quantities of butter and cream in storage from 10 June 1974 to 5 February 1975.

The plaintiff co-operative society does not contest for the purpose of the present proceedings that the aids payable by virtue of the above-mentioned contracts should be reduced by reason of the increase in the buying-in price of butter which was brought about by Regulation No 2496/74 of the Council, but disputes the contention that having regard to the terms of the contracts in this case and on a correct interpretation of Regulation No 2517/74, the alteration of the rate of exchange between the Irish pound and the unit of account effected by Regulation No 2498/74 of the Council can be regarded as entailing a further increase in the buying-in price of butter and *ipso facto* a subsequent reduction of aid which would thus be reduced to nought in the circumstances of this case.

Relying on the provisions of the aforementioned contracts and on the Community legislation concerned, the said co-operative society claimed payment of £457 475.87 Irish, or 891 391.75 units of account, expressed in national currency according to the new conversion rate for the Irish pound,

from the intervention agency as aid to private storage.

The intervention agency rejected that claim, pointing out that, under the second paragraph of Article 29 of Regulation No 685/69, as amended by Regulation No 2517/74 of the Commission, if the increase in the buying-in price for butter is higher than the level of aid, no aid shall be granted. It contends that this is true in the present case, where the buying-in price of butter for Ireland has undergone a "double" increase due:

— first, to the alteration of its level in units of account, which was brought about by Regulation No 2496/74, and

— secondly, to the alteration of its level in Irish pounds corresponding to the representative rate for the Irish pound laid down by Regulation No 2498/74.

4. The dispute was brought before the High Court of Ireland, which found that the determination of the issues between the parties requires an interpretation of Community law. Thus by an order of 13 July 1977, it decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"1. Did Regulation (EEC) No 2498/74 of the Council, which altered the exchange rate between the Irish pound and the unit of account, have the effect of increasing the 'buying-in price for butter' within the meaning of that expression as used in Article 29 of Regulation (EEC) No 685/69 of the Commission, as amended by Article 2 of Regulation (EEC) No 1064/69 of the Commission and as further amended by Article 4 of Regulation (EEC) No 603/70 of the Commission?

2. If the answer to the first question is in the affirmative, did Regulation (EEC) No 2498/74 of the Council have the effect of increasing the 'buying-in price for butter' (a) independently of, or (b) by reason of, the provisions of Regulation (EEC) No 2517/74 of the Commission?

3. If Regulation (EEC) No 2498/74 of the Council is to be regarded as having effected such increase in the 'buying-in price for butter' and a reduction in aids payable by the defendant to the plaintiff, by reason of the provisions of Regulation (EEC) No 2517/74 of the Commission, is the said Regulation (EEC) No 2517/74 valid and binding in relation to contracts in the form contained in the Third Schedule entered into before the enactment of the said regulations?

4. If aid is payable by the defendant to the plaintiff, is the entire aid to be paid at the representative rate for the Irish pound prevailing on the date of the termination of the storage, or is part of the aid referable to the period prior to 7 October 1974, and to be paid at the representative rate prevailing prior to that date?"

5. A copy of the order for reference was received at the Court of Justice on 25 July 1977.

An Bord Bainne Co-operative Limited, represented by McCann Fitzgerald Roche and Dudley, Solicitors, assisted by Nial Fennelly and Roderick J. O'Hanlon of Counsel, the Irish Minister for Agriculture, represented by Liam J. Lysaght, Chief State Solicitor, acting as Agent, and the Commission of the European Communities represented by its Legal Adviser, Richard Wainwright, acting as Agent, submitted written observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court opened the oral procedure without any preparatory inquiry, and, by an order of 9 November 1977, assigned the case to the First Chamber, in accordance with Article 95 of its Rules of Procedure.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — *An Bord Bainne* accepts for the purpose of the present proceedings that the aids payable to it under the contracts in question had to be diminished by the increase in the buying-in price of butter which was effected by Regulation No 2496/74 of the Council. However it claims that it is only through that regulation that the buying-in price for butter could lawfully be changed during the milk marketing year concerned, and that there is no legal basis for contending that that price has also been changed incidentally and indirectly by the operation of Regulation No 2498/74. The reference in Regulation No 1064/69 to "the buying-in price" means the buying-in price for butter, as expressed in units of account, and as determined by special act of the Council in each milk marketing year, subject only to the right of the Council to alter such buying-in price by an act passed after due deliberation, during the marketing year for which such price was fixed. It is claimed that Regulation No 2498/74 has no effect on the buying-in price for butter: that price, as expressed in units of account, is not affected by the alteration of the representative conversion rate for the Irish pound.

Such alteration merely indicates that the old representative conversion rates did not reflect current economic realities at the time, and the regulation in seeking to rectify that situation provided a new representative conversion rate for the purpose of restoring the new Member States to equal terms with their partners in the Community.

Furthermore, only the Community institutions, and not the national intervention agencies, are authorized to alter the intervention price for butter. At the time when the contracts referred to in these proceedings were entered into, Article 29 of Regulation No 685/69 made provision for change in the amount of aid only in the event of a change in the buying-in price of butter (that is to say, a price expressed in units of account). It is to be assumed that the reference in the storage contracts at issue in this case to such alteration in price was intended to have the same meaning. Moreover, it appears from the first subparagraph of Article 10 (1) of Regulation No 985/68, stipulating that the amount of aid paid to the storer shall be fixed "for the Community", that that amount must be the same throughout the Community. However, that would not be the case if the amount of the aid in question could have been decreased because of an alteration in the representative rate of the Irish pound.

Accordingly, in relation to the *first question*, An Bord Bainne submits that the answer should be that:

"Regulation (EEC) No 2498/74 of the Council did not have the effect of increasing the buying-in price of butter within the meaning of that expression as used in Article 29 of Regulation (EEC) No 685/69 of the Commission, as amended by Article 2 of Regulation (EEC) No 1064/69 of the Commission, and as further amended by Article 4 of Regulation (EEC) No 603/70 of the Commission."

Going on to consider the *second question*, An Bord Bainne denies that the expression "buying-in price", as it

appears in the above-mentioned regulations, can have been altered by the effect of Regulation No 2517/74, and thus have been given a new meaning by virtue of that regulation as and from 1 October 1974, incorporating the concept of the cash equivalent in monetary terms received by the seller into intervention.

The interested party's right to obtain payment of storage aids is based *inter alia* on storage contracts concluded with the competent intervention agency which specify the conditions necessary for that purpose. If Regulation No 2517/74 were to be construed as adding to those conditions the additional condition that an increase in the buying-in price expressed in national currency could change the contractual position, it would unilaterally modify the terms of the contracts to the interested party's detriment.

However, such a unilateral modification of a contractual right would be contrary to a general principle common to the laws of the Member States, that no one should be deprived of property without just compensation. An Bord Bainne examines in detail the case-law of the Court of Justice on the safeguard of fundamental rights and the observance of general principles of law and argues that furthermore it emerges therefrom that Community law protects vested rights and recognizes that traders' legitimate expectation of the continuance of an existing legal system may in certain circumstances require a guarantee that commercial transactions already entered into may be carried through in the manner contemplated. The regulations concerning the system of aids for private storage of butter and cream make it particularly necessary that these principles of case-law should be observed and applied.

The fact that the amount of aid and other contents of the contract are fixed by Community regulations and the fact moreover that the application of the system is made subject to precise conditions, such as the making of formal contracts between the interested party and the competent intervention agency and the observance of a minimum period of storage, show in fact that the person claiming to receive aid who has entered into a storage contract for that purpose is induced by those circumstances and by the guarantee of the payment of a definite amount to act in a manner which would otherwise cause him loss in several ways (the tying up of capital), the costs of putting the product into store and removing it, commercial risk, and so on).

In these circumstances, it is submitted that Regulation No 2157/74 should be construed as not having jeopardized the vested rights and legitimate expectations of traders who had already bound themselves by storage contracts prior to its enactment with a view to obtaining the aid at issue. Accordingly, the Court should reply in the negative to part (b) of the second question.

An Bord Bainne also relies upon these considerations to provide an answer to the *third question.*

At the time when the storage contracts were entered into, the only diminution which the contracting parties agreed might take place in the aids to be calculated in units of account, was to arise in the event of an increase taking place in the buying-in price of butter, namely, a figure which was determined in units of account by specific regulation of the Council for each marketing year. For the Commission to seek to change this contractual situation by Regulation No 2517/74, if it is to be regarded as affecting storage contracts entered into prior to its entry into force, would, it is submitted, fail to have regard to the recognition given in Community law to acquired rights and to the principle of legitimate expectation already referred to.

In so doing, not only did the Commission adopt an act which was incompatible with the Treaty and the rules of law relating to its application, but it also exceeded the powers conferred on it by Article 155 (fourth indent) of the Treaty and its powers under Article 6 (7) of Regulation No 804/68. In conferring powers to adopt "detailed rules for the application of the intervention system and in particular the amount of aid for private storage", the Council was not purporting to give to the Commission authority to make rules with retrospective effect which would result in diminution of aids already agreed to be paid before the rules were adopted.

The Council itself dealt with the circumstances under which storage aid could be increased or the amount thereof amended, when it prescribed in Regulation No 985/68 that the amount of aid could be "increased" when the market had developed unfavourably under conditions which could not be foreseen, and that the amount of aid could be "amended" for "future contracts" if the state of the market so required, but it made no provision for "decrease" in aids in the case of existing contracts.

Furthermore, if it is accepted that the Regulation No 2517/74 has retrospective effect, then it is submitted that the Commission infringed an essential procedural requirement in that in the regulation it did not give an adequate statement of the reasons for which it was departing in a significant manner from the principles generally applied in the law of the Community.

Finally, as regards the answer to the *fourth question*, An Bord Bainne submits that, having regard in particular to Articles 4 (2) and 6 of Regulation No 1134/68, Article 26 of Regulation No 685/69, the various clauses of the storage contracts entered into in this case and the case-law of the Court in relation to the provisions concerned, the entitlement to storage aid arises only when the butter is withdrawn from storage with the written permission of the intervention agency after the requisite minimum period, the conditions of contract having in the meantime been fully complied with. An Bord Bainne suggests accordingly that the reply to the said question should be to the effect that the conversion rate applicable to the entire amount of units of account payable as storage aids should be that obtaining as of the date when the butter was withdrawn from storage.

B — In his written observations, the Irish *Minister for Agriculture* refers to the arguments put forward in the main action. He contends in particular that the alteration in the rate of exchange for the Irish pound, enacted by Regulation No 2498/74 of the Council, resulted in an increase in the buying-in price of butter expressed in Irish currency which was applied by the intervention agencies; and that the result of this increase, added to the increase brought about by Regulation No 2496/74 of the Council fixing for Ireland a new buying-in price for butter expressed in units of account, is that no aid for the private storage of butter and cream is payable to An Bord Bainne under the storage contracts concluded.

Moreover, supposing that Regulation No 2498/74 did not by its own terms or by its own force affect the level of the intervention price for butter in Ireland, that regulation should be deemed to have done so by virtue of the provisions of Regulation No 2517/74. Even if the "buying-in price" for butter, referred to in Regulation No 1064/69 and in the contracts entered into by the plaintiff, formerly meant the intervention price determined in units of account by special act of the Council for each marketing year, that expression was given a new meaning as from 1 October

1974, the date on which Regulation No 2517/74 entered into force, incorporating the concept of "the cash equivalent in monetary terms" received by the seller into intervention.

The Minister for Agriculture also contends that, in the circumstances mentioned in the last question referred for a preliminary ruling, the amount payable to the plaintiff in discharge of the obligations assumed under the aforementioned contracts should be calculated by applying the conversion rate applicable from time to time, and that the new conversion rate resulting from Regulation No 2498/74 should not be applied to units of account which became payable prior to the date of its entry into force.

For the rest, he refers to the written observations submitted to the Court by the Commission of the European Communities.

C — The *Commission of the European Communities* first of all sets out the features of the system of aid for the private storage of butter and cream, which is intended to counteract seasonal price fluctuations by a temporary withdrawal from the market, and which is to be contrasted with the system of purchase by intervention agencies.

After having stated in particular the criteria underlying the calculation of the amount of aid fixed by the Commission, the Commission points out that by virtue of Article 29 of Regulation No 685/69 as amended by Regulations Nos 880/69, 1064/69 and 603/70, that amount shall be altered with reference to any changes in the buying-in price for butter which is in store at that moment. That article in its original form, which provided only for an increase in the amount of the aid, sought to compensate the storer for a proposed reduction in the intervention price for butter. It was thus felt right that an aid whose amount had been calculated on the basis of foreseeable price trends should be recalculated in the event of an act by the Community which affected prices either by way of a decrease, as originally envisaged, or of an increase, as subsequently included. In the one case, the expected profit of the storer on the total operation would be unexpectedly diminished, and in the other it would be unexpectedly increased. Thus amendments taking account of these requirements were made to that regulation in 1970, when the limitation to one marketing season was removed (Regulation No 603/70 of the Commission of 31 March 1970, Official Journal, English Special Edition 1970 (I), p. 169) and in 1974, by Regulation No 2517/74 which added thereto the provisions at issue in this case. It might be argued that even without such express provisions Article 29 is to be interpreted in the same sense, since its objectives are precisely to compensate the storer under contract for Community price changes which might adversely affect his position in the market at the end of the storage period, or *vice versa*.

In fact, the motivation stated in Regulation No 2517/74 does show that the regulation is to be regarded as bringing about a material change in the application of Article 29. This view is consistent with that taken by the Council in November 1973 when, on the proposal of the Commission, it decided the measures to be taken following the revaluation of the Dutch guilder. Among these measures was an authorization to the Netherlands to grant for stocks of butter and of cream, which at the date of the decision by the Dutch authorities to revalue the guilder by 5% were subject to storage contracts concluded with the intervention agency, a special aid intended to counteract the loss which resulted from the application of the new representative exchange rate for the Dutch guilder decided by the Council. At that time the view was

taken by the Community authorities that Article 29, as it was then drafted, could not properly be interpreted so as to give the Dutch storer under contract an automatic right to increase in the aid payable as a result of the effective decrease in the buying-in price, as expressed in guilders, resulting from the conversion rate change, and that some other action was therefore required in order to compensate the storer.

A further point of interest is the date of entry into force of Regulation No 2517/74 which, having been adopted on 3 October 1974 and published on 4 October, entered into force on 1 October 1974. The reason for choosing that date is simply that 1 October 1974 had been proposed by the Commission for the entry into force of the new representative rates for the United Kingdom and Irish pounds.

To complete the picture of Article 29 of Regulation No 685/69, mention should finally be made of the amendment brought about, subsequent to the events which have given rise to the present case, by Regulation No 837/75 of the Commission of 26 March 1975 (Official Journal 1975 L 79, p. 52). This regulation provides that any additional amount added to the buying-in price prior to the application of a new buying-in price is to be regarded as a price increase within the meaning of the aforesaid Article 29 with a consequent reduction in the amount off private storage aid. It is clear that the objective of this amendment is the same as that of the amendment brought about by Regulation No 2517/74, that is, to take away the supplementary advantage to the storer of an increase in price he would receive at the end of the storage period.

After stating this, the Commission briefly describes the system of the monetary measures concerning this case, in particular the system of "representative rates", which apply only in the agricultural sector and establish the relationship between the unit of account and a national currency as well as between the different national currencies.

After outlining the functioning and the origin of such system, the Commission points out that any amendment to the representative rate has the effect of changing the level of agricultural prices within the Member State concerned, up in the case of a devaluation of the representative rate, down in the case of a revaluation. In order to mitigate the disadvantages associated with revaluation, consisting in particular in the case of Member States with stronger currencies in a reduction of agricultural prices, it has recently become customary for "revaluation" to take effect at the same time as the beginning of the marketing year, since the review of agricultural prices expressed in units of account, which takes place at that time, usually involves their being increased and can thus compensate for the reduction in price due to the effect of a revalued representative rate.

The increase in agricultural prices effected by Regulation No 2496/74 of the Council which is at issue in this case is exceptional since it contravened one of the principles of the common organization of the agricultural markets, which is based on an annual price review on the basis of which producers and traders can make their forecasts and plans for the whole year. The reasons for that review, involving for Ireland an increase in the price of butter expressed in units of account, are clearly set out in the recitals to Regulation No 2496/74. The fact that this regulation was made to apply on the same day as Regulation No 2498/74, fixing a new representative conversion rate for the Irish pound, shows that the devaluation measure contained in the latter provision is to be seen as linked to the general price increase and as having, at least in part, the same objectives — namely the increasing of prices for Irish

agricultural produce to take account of the exceptional difficulties mentioned in Regulation No 2496/74 in the sphere of agriculture, which were aggravated in the case of Irish producers by the exceptional depreciation of their currency over the period 1973/1974.

After setting out these considerations, the Commission endeavours to reply to the questions referred for a preliminary ruling by the Irish court. Referring to the *first two questions*, which it considers can suitably be dealt with together, the Commission observes that according to the analysis already made, the change in the representative rate brought about by Regulation No 2498/74 did involve an increase in the buying-in price under Article 29 of Regulation No 685/69. It emerges from that analysis that hitherto the Commission has adopted a restrictive interpretation of the said article, in that prior to that regulation, a change in the national buying-in price brought about by a change in the representative rate was not considered to be a change in the buying-in price within the meaning of the aforementioned Article 29. If the Court were minded to adopt a wider interpretation of the expression "increase in buying-in price" used in Article 29, as unamended, the Commission would not contest it, since such interpretation would in its view be consistent with the objectives of the said article, which aims to neutralize for the storer the effects of unforeseeable changes in the price which he will obtain at the end of the storage period which are brought about by Community price decisions. However, in view of the position it has consistently adopted, the Commission feels obliged to argue in favour of a narrower inerpretation of Article 29 of Regulation No 685/69, to the effect that Regulation No 2498/74 results in increasing the buying-in price for butter only by reason of the amendments made by Regulation No 2517/74.

Regarding the *third question*, the Commission takes the view that Regulation No 2517/74 is to be interpreted as altering the amount of aid to which those storers were entitled who had butter and cream in private storage at the date when the regulation entered into force, and whose aid was payable in a currency whose representative rate was henceforward devalued as a result of Regulation No 2498/74. Any other interpretation would rob Regulation No 2517/74 of all content until the next round of changes in the representative rates, whereas it is clear from the timing of the regulation that it was intended to apply to the effects of the changes in representative rates of 7 October 1974.

Moreover, the various grounds for complaint advanced against Regulation No 2517/74 by the plaintiff in the main action are unfounded.

— Regarding the complaint that the said regulation involved an unwarranted attack on the applicant's rights, it is sufficient to observe that the regulation was both warranted and just, since a change in the buying-in price brought about by an amendment to the representative rate and a change in the same price as expressed in units of account both have the same effects on the rights of the storer as provided for by Article 29. The objective of that provision is to prevent storers of butter and cream under contracts with intervention agencies from incurring unforeseeable changes or benefits as a result of price changes brought about by Community legislation (Cf. Annex II to the Written Observations of the Commission).

— Regarding the complaint based on the argument that Regulation No 2517/74 has retroactive effects, the Commission points out that it adopted the regulation in the belief that the regulation of the Council

changing the representative rate would enter into force on 1 October 1974 in accordance with the Commission's proposal, and that therefore it was expedient to appoint the same date for the entry into force of Regulation No 2517/74. Moreover, this element cannot affect the applicant's position in any way, since a storer could have grounds for complaining of the retroactive effects of the said regulation only if the devaluation had taken place on 1 October and the goods had been removed from storage between 1 and 4 October.

— Regarding the complaint of interference with vested rights, the Commission begins by analysing the storage contracts concluded in this case, in particular Conditions Nos 10 to 13 and No 17 thereof. It emerges from that analysis, first, that on 4 October 1974, for three of the contracts, concerning butter put into storage in the period between July and September, the basic condition relating to the minimum storage period had not yet been fulfilled, and that on that date it is possible, but not probable, that that condition was fulfilled for the other two contracts, concerning butter which went into storage during June. Again, even assuming that condition to have been fulfilled, it would be most consistent with the case-law of the Court regarding "vested rights" to conclude that the applicant had no effective right under any of its contracts to be paid a particular sum by way of the aid at issue until the quantities in question had been removed from storage.

— Regarding the argument to the effect that on the facts of this case the applicant was deprived of a benefit which it was reasonably entitled to expect, it is contended that that argument runs counter to the case-law of the Court, in particular the principle stated by the Advocate General in Joined Cases 95 to 98/74 [1975] ECR 1615 at p. 643. The manifest object of Article 29 of Regulation No 685/69 is the neutralization of "any" advantage or disadvantage accruing to private storers as a result of a change in the intervention price. Although that objective is not explicitly stated, storers could not reasonably expect that the philosophy underlying the aforementioned provision would not also be applied in the case of a change in the intervention price as expressed in national currency. All the more so since, as has been pointed out, measures had been taken in 1973 to compensate Dutch storers for the effects of the revaluation of the Dutch guilder on the prices which they could expect to receive at the end of their storage period.

— Furthermore, regarding the complaint based on infringement of fundamental rights, first, in the present case it is by no means clear what is the fundamental right which, in the applicant's submission is infringed by a Community measure having the effect of reducing to nought a Community aid to which the applicant claims to be entitled. Secondly, it must not be forgotten that even where such rights exist, they are subject to certain limits, and that in any event, the guarantees given by virtue of such rights cannot be extended to protect mere commercial interests or opportunities, involving an element of risk which is of the essence of economic activity.

The Commission also rejects the complaint of misuse of powers, basing itself on the general considerations already set out and pointing out that, according to the calculations set out in Annex II to its Written Observations,

the financial position of storers in the applicant's situation is more favourable than it was prior to the devaluation of the Irish pound, when the reduction of the aid in question to nought is also taken into account. The Commission further points out that a measure such as the one at issue in this case, by its content and by its purpose, falls within the measures which it has the power to adopt pursuant to the delegation of powers contained in Article 6 (7) of Regulation No 804/68 of the Council, and therefore does not involve a misuse of powers.

Finally the Commission rejects the complaint of an insufficient statement of reasons, basing itself on the case-law of the Court and observing that the statement of reasons in Regulation No 2517/74 is not inadequate to the degree that the applicant could not in the circumstances of this case discern the reasons and objectives of the said regulation or that the Court would not be in a position to review the legality of the regulation.

With regard to the *fourth question*, the Commission states that, in view of its argument set out above to the effect that no aid is payable in this case, it is not obliged to supply an answer. In so far as it may be of interest, the Commission puts forward the view that, in the case of butter which is in store under contract at the date of entry into force of a new representative rate, the entire aid is to be paid at the new rate. In particular, the Commission considers that, since the amount due as aid can be amended under Article 29 of Regulation No 685/69 right up to the date of removal from store, the aid is not "due and payable" until that date.

On the basis of these observations, the Commission proposes that the questions referred for a preliminary ruling should be answered as follows:

"1. Article 29 of Regulation No 685/69 of the Commission of 14 April 1969 on detailed rules of application for intervention on the market in butter and cream as amended by Regulation No 2517/74 is to be interpreted in the sense that an increase in the buying-in price of butter expressed in Irish pounds was brought about by Regulation No 2498/74 of the Council of 2 October 1974 fixing representative conversion rates to be applied in agriculture for the currencies of the new Member States.

2. Examination of the questions raised has not revealed any factor capable of affecting the validity of Regulation No 2517/74 of the Commission of 3 October 1974 amending Regulation No 685/69 as regards adjustment of private storage aid for butter to take account of changes in the buying-in price.

3. Regulation No 2517/74 is to be applied to butter and cream subject to contracts relating to private storage which was in store on 3 October 1974."

III — Oral procedure

An Bord Bainne and the Commission of the European Communities presented oral argument at the hearing on 1 December 1977.

The composition of the Chamber having been altered, it was decided, after hearing the views of the parties to the main action, to re-open the oral procedure at the hearing on 26 January 1978.

The parties to the main action having declared that they stood by their previous statements, the Advocate General delivered his opinion at that hearing.

Decision

1 By an order dated 13 July 1977, received at the Court on 25 July 1977, the High Court of Ireland has referred to the Court under Article 177 of the EEC Treaty questions concerning the interpretation of Regulation No 685/69 of the Commission of 14 April 1969 on detailed rules of application for intervention on the market in butter and cream (Official Journal, English Special Edition 1969 (I), p. 194), and on the validity of Regulation No 2514/74 of the Commission of 3 October 1974, which entered into force on 1 October 1974, amending Regulation No 685/69 as regards the adjustment of private storage aid for butter to take account of changes in the buying-in price (Official Journal 1974, L 269, p. 24).

2 These questions have been referred in the context of proceedings brought by an Irish co-operative society with limited liability, carrying on the business of marketing milk and milk products, against the Minister for Agriculture and Fisheries, who is the intervention agency in Ireland for the purposes of the Common Agricultural Policy.

3 The dispute between the parties concerns the amount of aid which should have been paid for certain quantities of butter and cream which the plaintiff co-operative society had stored privately, under Article 6 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176), and which had not yet been removed from storage on 7 October 1974.

4 The said co-operative society claims that although the amount of the aid has been reduced owing to the new buying-in price for butter expressed in units of account laid down by Regulation No 2469/74 of the Council of 2 October 1974 (Official Journal 1974, L 268, p. 1) as from 7 October 1974, that does not mean that the said amount has been affected by the alteration of the representative exchange rate for the Irish "green" pound enacted by Regulation No 2498/74 of the Council of 2 October 1974 (Official Journal 1974, L 268, p. 6) also as from 7 October 1974.

5 On the other hand, the intervention agency contends that the buying-in price for butter in Ireland, as applied before 7 October 1974, has undergone a double increase, as its level has been raised both in units of account and in

Irish national currency, through the combined effect of the two Council regulations aforementioned.

6 It contends that, owing to that increase and in accordance with the second paragraph of Article 29 of Regulation No 685/69 of the Commission, as supplemented by Regulation No 2517/74 of the Commission, no aid is due to the plaintiff co-operative society in respect of the quantities of butter and cream still in storage on the aforementioned date.

7 In the first two questions, the High Court asks whether Regulation No 2498/74 of the Council, which altered the exchange rate between the Irish pound and the unit of account, had the effect of increasing the "buying-in price for butter" within the meaning of that expression as used in Article 29 of Regulation No 685/69 of the Commission, as amended by Regulations No 1064/69 and No 603/70 of the Commission, and whether such increase took place independently of or by virtue of the provisions of Regulation No 2517/74 of the Commission.

8 Regulation No 2498/74 altering the representative conversion rate for the Irish green pound which had been fixed by Regulation No 222/73 of the Council of 31 January 1973 (Official Journal 1973, L 27, p. 4), applies, according to Article 1 thereof, to "transactions to be carried out in pursuance of intruments relating to the common agricultural policy".

9 The Annex to Regulation No 1134/68 of the Council of 30 July 1968 (Official Journal, English Special Edition 1968 (II), p. 396) to which the fourth recital in the preamble to Regulation No 2498/74 refers, does not mention the buying-in price applied by the intervention agencies among the amounts to be adjusted in the case of an alteration of the parity of the national currency of a Member State in relation to the unit of account.

10 Therefore Regulation No 2498/74, considered solely in relation to the regulations within the framework of which it was adopted, cannot have had the effect of bringing about an increase in the buying-in price for butter expressed in Irish national currency.

11 On the other hand, a change in the buying-in price due to a change in the parity between the unit of account and a national currency is expressly provided for by Article 29 of Regulation No 685/69, as supplemented by Regulation No 2517/74 of the Commission.

12 The aforesaid Article 20 lays down that the amount of aid for the private storage of butter shall be increased or decreased by reason of any corresponding change in the buying-in price expressed in units of account, and goes on to provide in the last subparagraph that

"The provisions of the preceding subparagraphs shall also apply in the event of a change in the buying-in price for butter, expressed in national currency, applied by the intervention agency".

13 Regulation No 2517/74, providing for the addition of this last subparagraph to Article 29, entered into force on 1 October 1974 and was therefore applicable when Regulation No 2498/74, adopted on 7 October 1974, entered into force.

14 Therefore the appropriate answer to the first two questions is that Regulation No 2498/74 of the Council of 2 October 1974 brought about an increase in the buying-in price for butter expressed in Irish pounds, by virtue of the provisions of Article 29 of Regulation No 685/69 of the Commission of 14 April 1969, as supplemented by Regulation No 2517/74 of the Commission of 3 October 1974.

15 In its third question, the High Court asks whether, if Regulation No 2498/74 of the Council is to be interpreted as having brought about an increase in the intervention price for butter, by the effect of the provisions of Regulation No 2517/74 of the Commission, the latter regulation is to be regarded as valid and binding in relation to private storage contracts entered into before its entry into force.

16 The system of aid for the private storage of butter provided for by Article 6 (2) of Regulation No 804/68 of the Council of 27 June 1968 is one of the intervention measures introduced by that regulation in order to attain the objectives of the Common Agricultural Policy which are referred to in Article 39 of the Treaty.

17 The sixth and the last recitals in the preamble to Regulation No 985/68 of the Council of 15 July 1968 (Official Journal, English Special Edition 1968 (I), p. 256) state that such measures "must take account of the development of the market situation" and, in the case of private storage in particular, "must contribute to the attainment of a balanced market".

18 To that end, Article 10 of the regulation provides that the amount of private storage aid may be altered if, at the time of removal from store, the state of the market has developed unfavourably under conditions which could not be foreseen.

19 Like that provision, the first version of Article 29 of Regulation No 685/69 of the Commission provided that, "Should the buying-in price for butter decrease . . ., the aid specified in Article 24 shall be increased by an amount equal to that decrease, in respect of quantities of butter covered by a contract and taken into store before the date on which the change in the buying-in price became effective".

20 Regulations Nos 880/69 (Official Journal, English Special Edition 1969 (I), p. 218), 1064/69 (Official Journal, English Special Edition 1969 (I), p. 235) and 603/70 (Official Journal, English Special Edition 1970 (I), p. 169) of the Commission supplemented the system thus introduced by providing that the amount of private storage aid may also be altered if the buying-in price for butter applied by the intervention agencies should increase.

21 Those rules are the result of the Commission's concern to ensure that the implementation of the arrangements for aid for private storage of butter should take account of the development of the market, so as to ensure that, as intended by the basic Regulation No 804/68, the amount of aid granted should correspond to the level of actual prices at the end of the period of storage.

22 Such an objective would not be attained if a change in the buying-in price were to result in a loss or, conversely, in an unjustified profit for a trader removing goods from storage by comparison in particular with traders who had sold into intervention in the same marketing year.

23 Treating a change in the buying-in price expressed in national currency in the same way as a change in that price expressed in units of account, Regulation No 2517/74 merely supplements those rules on the adjustment of private storage aid.

24 Since every decrease or increase in the buying-in price, whatever its origin, is reflected in the market price, particularly in the case of a market with a surplus such as the market in milk products, such treatment in fact allows

the amount of private storage aid to be adjusted to the real and justified needs of storers.

25 The plaintiff in the main action claims that Regulation No 2517/74 interferes with its rights under private storage contracts entered into before its entry into force with the competent national intervention agency, and is therefore contrary to the principle of respect for vested rights.

26 The mere fact of entering into private storage contracts as referred to in Article 9 of Regulation No 985/68 of the Council, and the placing of goods in private storage cannot in themselves suffice to confer any right to payment of a specific amount of aid.

27 The person concerned acquires such a right only if the quantities of butter covered by the storage contracts have remained in storage for a specified minimum period, in accordance with the detailed rules laid down by Regulation No 685/69, and if they have been taken out of store in accordance with any conditions laid down in those contracts, which did not occur in this instance.

28 Moreover, on the grounds of public interest mentioned above, the grant of aid for private storage of butter is subject at all times to the provisions of the Community rules relating thereto.

29 Hence, the complaint of infringement of vested rights and also that of failure to have regard to legitimate expectation cannot be upheld in the present case, and it is to be concluded that Regulation No 2517/74 of the Commission applies to storage contracts entered into before the entry into force of Regulation No 2498/74 of the Council, in respect of quantities of butter not yet removed in the proper manner from storage on that date, namely 7 October 1974.

30 The plaintiff in the main action also claims that the Commission was not competent to enact the rules at issue, as only the Council had the power, under Article 6 (6) of Regulation No 804/68, to alter the amount of private storage aid in response to a change in the representative rate of the Irish green pound.

31 In that connexion, the plaintiff in the main action points out that it was by a regulation of the Council (Regulation No 3141/73, Official Journal 1973, L 321, p. 1) that in November 1973 the Netherlands were authorized to grant for stocks of butter and of cream, which at the date of the decision by the Netherlands authorities to revalue the guilder by 5 % were subject to storage contracts, a special aid intended to counteract the loss of value which resulted from the application of the raised agricultural exchange rate for the guilder.

32 According to Article 6 (7) of Regulation No 804/68, "Detailed rules for the application of this article, and in particular the amount of aid for private storage, shall be adopted in accordance with the procedure laid down in Article 30".

33 Characterized by the presence of the "Management Committee for Milk and Milk Products", that procedure confers rule-making powers on the Commission which enable it to adopt legislative measures in such fields as the arrangements for aid for private storage of butter.

34 Since Regulation No 2517/74 relates precisely to those arrangements, the complaint of lack of competence raised in the present case is without any legal foundation.

35 Finally, the plaintiff in the main action complains that there is no adequate statement of the reasons on which Regulation No 2517/74 is based.

36 The reasons on which a piece of legislation is based may appear not only from its own wording, but also from the whole body of the legal rules governing the field under consideration.

37 Situated in the context of the rules governing intervention arrangements laid down by Regulations No 804/68 and No 985/68 of the Council, and more particularly in that of private storage aid, Regulation No 2517/74 makes it possible to discern the reasons justifying the addition of the last subparagraph to Article 29 of Regulation No 685/69.

38 For those reasons, the appropriate answer is that consideration of the third question raised has disclosed no factor of such a kind as to affect the validity of Regulation No 2517/74 of the Commission.

39 In view of this answer, there is no need to consider the fourth question raised.

Costs

40 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

41 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, costs are matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the questions referred to it by the High Court of Ireland by an order of that court dated 13 July 1977, hereby rules:

1. **Regulation No 2498/74 of the Council of 2 October 1974 brought about an increase in the buying-in price for butter expressed in Irish pounds, by virtue of the provisions of Article 29 of Regulation No 685/69 of the Commission of 14 April 1969, as supplemented by Regulation No 2517/74 of the Commission of 3 October 1974.**

2. **Consideration of the third questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No 2517/74 of the Commission.**

3. **Regulation No 2517/74 of the Commission applies to storage contracts entered into before the entry into force of Regulation No 2498/74 of the Council, in respect of quantities of butter not yet removed in the proper manner from storage on that date, namely 7 October 1974.**

Bosco Donner O'Keeffe

Delivered in open court in Luxembourg on 23 February 1978.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber