subsidies on imports from Member States and third countries, to be granted by the French Republic following the devaluation of the French franc in 1969, were intended to compensate were exclusively concerned with the amounts to be paid by that Member State in the context of its interventions on the internal market and not with the amounts which, like the levy imposed on imports of cereals, relate to trade with third countries and must be paid by traders.

Nothing in Regulations Nos 1586/69 or 1432/70 justifies the assumption that the Council intended to compensate for all the effects of the devaluation of the French franc on the purchase price, expressed in that currency, of cereals from third countries imported into France.

4. It is clear from Article 107 of the EEC Treaty that it is for each Member State to decide upon any alteration in the rate of exchange of its currency under the conditions laid down by that provision.

5. Although the powers conferred on the Community institutions by the Treaty, in particular by Article 103(2) thereof, include the power to alleviate, in the common interest, certain effects of a devaluation or of a revaluation, it does not follow that the Council must compensate for all these effects in so far as they are adverse to the importers or exporters of the Member State concerned.

In fact, by empowering the Council to 'decide upon the measures appropriate to the situation', without obliging it to do so, Article 103 conferred on that institution a wide power of discretion to be exercised in accordance with the 'common interest' and not with the individual interests of a specific group of traders.

6. Since the main objective of the common agricultural policy is 'to ensure a fair standard of living for the agricultural Community, in particular by increasing the individual earnings of persons engaged in agriculture' there may be greater justification for supporting the exportation of agricultural products to third countries rather than the importation of those products.

In Joined Cases 9 and 11/71

(1) COMPAGNIE D'APPROVISIONNEMENT, de transport et de crédit SA

(2) GRANDS MOULINS DE PARIS SA,

companies with their registered offices in Paris, represented by their Chairmen/Managing Directors in office, assisted by André Vidart and Michel Nicolay, Advocates at the Conseil d'État and the Cour de cassation of France, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B IV rue Philippe-II,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Armando Toledano-Laredo and Jacques H. J. Bourgeois, acting as Agents, with

an address for service in Luxembourg at the office of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

defendant,

Applications for the annulment of implied or express decisions rejecting the applicants' requests for recognition of their entitlement to compensation; and for a declaration that they are entitled to compensation

THE COURT,

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. On 11 August 1969, under Article 103 of the Treaty, the Council adopted Regulation (EEC) No 1586/69 on certain measures of conjunctural policy to be taken in the agricultural sector as a result of the devaluation of the French franc (JO No L 202, p. 1).
The first paragraph of Article 1(1) of the regulation provides, in particular that 'the intervention or purchase prices to be paid by France, in accordance with the regulations on the common organization of the agricultural markets, in respect of intervention on the internal market shall, until the end of the 1969/1970 marketing year, be reduced, in the sector concerned, by 11.11%'. Furthermore Article 3(1) lays down that 'in so far as it is necessary to compensate for the effects' in particular of the aforementioned measures 'France shall grant subsidies for imports from Member States and third countries'. Finally Article 8 vests in the Commission the necessary powers to lay down detailed rules for the application of those provisions and those rules must include 'in particular, the fixing of the amounts ... of the import subsidies'.
On this basis, the Commission adopted, on 22 August 1969, Regulation (EEC) No 1670/69 on certain measures to be taken with regard to the cereals and rice sectors as a result of the devaluation of the

French franc (JO L 214, p. 7). Under Section A of the Annex referred to in Article 2 of the regulation, the subsidy for common wheat and meslin (heading 10.01 A of the Common Customs Tariff) was fixed at FF 58.49 per metric ton.
When the Compagnie d'Approvisionnement, de Transport et de Crédit (hereinafter called 'the Compagnie d'Approvisionnement') brought an action for annulment of that provision, the Court dismissed the application as inadmissible, holding that the contested measure was in the nature of a regulation and was not of individual concern to the applicant (Judgment of 16 April 1970 in Case 65/69, [1970] ECR 229).

2. Article 1(1) of Regulation (EEC) No 1432/70 of the Council of 20 July 1970 on the adjustment of the reduced intervention and purchase prices to be paid by France as a result of the devaluation of the French franc (JO No L 159, p. 20) provides that 'until the end of the 1970/1971 marketing year the following prices to be paid by France in accordance with the regulations on the common organization of the agricultural markets, because of intervention on the domestic market shall be reduced by ... (b) 8.44% as regards the intervention price for common wheat and durum wheat'.
Accordingly, Section A of the Annex to Regulation (EEC) No 1505/70 of the Commission of 28 July 1970 (JO L 166, p. 33) fixed the subsidy on imports into France of common wheat and meslin at FF 44.43 per metric ton.

3. In letters dated 15 and 16 November 1970, the Compagnie d'Approvisionnement and Grands Moulins de Paris (hereinafter called 'Grands Moulins') asked the Commission in particular to acknowledge their right to compensation for the damage caused to them on each occasion on which a certificate was issued in application of a decision wrongfully taken under the regulation, namely (letter of 15 November) Regulation No 1670/69 and (letter of 16 November) Regulation No 1505/70. The letter of 15 November particularly concerns the application in Case 11/71, and the letter of 16 November the application in Case 9/71.
In a letter of 16 February 1971 the Commission informed the undertakings that it could not grant these requests.

4. The present applications, both of which have been submitted jointly by the Compagnie d'Approvisionnement and Grands Moulins were lodged at the Court Registry on 16 and 18 March 1971.
On 26 April 1971, the defendant lodged applications, pursuant to Article 91 of the Rules of Procedure, for an interlocutory decision on a procedural issue regarding the admissibility of the applications and for a declaration that they were inadmissible. In statements submitted on 1 June 1971, the applicants asked the Court to dismiss the objection of inadmissibility and to declare the applications admissible. The Court heard the parties on this preliminary objection on 29 June 1971; the Advocate-General delivered his opinion thereon at the hearing on 14 July 1971. By order of 14 July 1971 the Court decided to reserve its decision for the final judgment and to reserve costs.
By order of 18 June 1971 the Court decided to join the cases for the purposes of procedure and judgment.
The written procedure in the main action followed the normal course and after hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.
The parties presented oral argument at the hearing on 22 March 1972.
The Advocate-General delivered his opinion at the hearing on 24 May 1972.

II — Conclusions of the parties

In Case 9/71 the applicants claim that the Court should:

(1) annul both the decision of refusal implied by the absence of a reply from the Commission for more than two months after receipt of the applicant's letter on 19 November 1970 and the decision of 26 February 1971

confirming the aforementioned implied decision; and in a separate ruling, find in their favour with regard to the said application; and in so doing:

(2) pursuant to the second paragraph of Article 215 of the Treaty, recognize their right to compensation for the damage caused them on each occasion on which an import certificate was granted to them in application of the illegal decision in the form of a regulation and on the principles laid down by the latter and, in this connexion, to order that the damage thereby sustained shall be made good by payment to the applicants of the difference between the amount of the compensatory payment due under Article 10.01 A, mentioned above, and the larger compensatory payment when account is taken of all the factors entering into the calculation of the price of imported wheat owing to the revaluation of the French franc, that is, in short, FF 1.88 per quintal during the 1970/1971 marketing year multiplied by the number of quintals entered on each certificate:

(3) secondly, and in any case, recognize immediately, by means of the present application, the aforementioned right to compensation on the terms set out above, as a result of the wrongful act of the Commission; assess, on the basis of FF 1.88 per quintal and of the number of quintals entered on each certificate, the amount of damage resulting from such act and order the Commission to pay the resultant sum to the applicant companies;

(4) recognize, in addition, their right to compensation for the damage caused them as a result of the Commission's wrongful act and arising from the fact that they did not receive the same treatment as millers in Germany and the Netherlands, with all the consequences implied in law;

in the alternative, recognize their right thereto on account of the breach of the principle of the equality of all citizens before the administration, with all the consequences implied in law;

(5) order [the Commission] to pay all the costs;
in the alternative, order an experts' report to be obtained so as to ascertain the damage suffered per quintal of imported wheat and the number of quintals entered on each certificate;
reserve costs in this case.

In Case 11/71 the applicants put forward conclusions which are largely identical to those in Application 9/71, with the following differences:

— under (2),

— between 'the principles laid down by the latter' and 'and, in this connexion to order that', read 'namely Article 10.01 A which appears in the Annex to Regulation (EEC) No 1670/69 of 22 August 1969';

— for 'FF 1.88 per quintal during the 1970/1971 marketing year' read 'FF 1.93 per quintal during the 1969/1970 marketing year';

— under (3), instead of 'FF 1.88' read 'FF 1.93'.

In both cases the defendant contends that the Court should:

'dismiss the applications as inadmissible and in any case as unfounded; and order the applicants to pay the costs'.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. *Admissibility*

The *defendant* contends that the applications are inadmissible both as a whole and with regard to each head of claim.

With regard to the claims for compensation, the *defendant* argues that the very fact that the damage is expressed as the precise difference between the amounts payable under the contested regulations and those which would be payable under rules acceptable to the applicants shows that those claims are disguised applications for annulment of the said regulations designed to circumvent the inadmissibility barring such applications and the inadmissibility of the applications for annulment which are the subject-matter of the present action.

The *applicants* state in reply that the object of a claim for damages is by definition different from that of an application for annulment. The present applications merely raise an objection with regard to the contested provisions on the ground of illegality. If the objection were upheld, those provisions would still be effective *erga omnes* but could no longer be set up against the applicants.

As regards the applications for annulment, the *defendant* contends that in order to grant the applicants' request to have their right to compensation recognized, it would have had to acknowledge that the regulations in question were unlawful and repeal the contested provisions, replacing them by provisions which met the applicants' requirements. The effect of the third paragraph of Article 175 of the Treaty is that individuals cannot complain to the Court of failure by an institution to take measures in the form of a regulation.

As for the letter of 26 February 1970, this does not constitute a decision which can be the subject of an application under Article 173. The applicants' letters of 15 and 16 November 1970 constituted prior applications within the meaning of Article 43 of the Statute of the Court of Justice of the European Economic Community. According to the case-law of the Court the periods for lodging an application laid down in Articles 173 and 175 of the Treaty do not commence to run in the case of such an application. Consequently the silence of the Commission during the two months which followed those letters cannot give rise to an action for failure to act and the express reply of 26 February 1971 cannot be the subject of an application for annulment.

The *applicants* reply that the applications concerned are based on Articles 173 and 175 of the Treaty. When a person subject to the jurisdiction requests the Commission for a reply which is of direct and individual concern to him, he is entitled to make use, according to the circumstances, of the procedures laid down by one or other of the abovementioned provisions. Moreover, the defendant's argument is contradicted by the actual wording of Article 43 of the Statute of the Court of Justice.

2. *Substance of the case*

A — Claims for compensation

As regards the facts in dispute, the *applicants* first claim that the Compagnie d'Approvisionnement imports wheat for several French mills including Grands Moulins. For this purpose, it deals under its own name with foreign sellers on the one hand and on the other with Grands Moulins; thus it performs on its own account contracts entered into with foreign sellers on the instructions of Grands Moulins and assigns the contract thus made to the latter which, in the end, bears the consequences of the facts in question.

These facts are that when the defendant fixed the import subsidies for the products concerned first at FF 58.49 per metric ton (Regulation No 1670/69, in respect of the 1969/1970 marketing year) and then at FF 44.43 per metric ton (Regulation No 1505/70, in respect of the 1970/1971 marketing year), it did not take exact account of the increases in the price of imported wheats owing to the devaluation of the French franc. The Commission reckoned that there would be no increase in the price of French wheat and based its calculation of the effect of devaluation on the average price on the domestic market instead of on the average price of imported wheat inclusive of the levy. As a result, the price which importers have at present to pay for imported wheat is higher than the price which they had to pay before

devaluation notwithstanding the subsidies in question, the amount of which is clearly inadequate.

In particular, in calculating the subsidy of FF 44.43 per metric ton (that is, in practice, FF 4.44 per quintal), the defendant first took the average guaranteed price for wheat in France, which was FF 46.78 per quintal; then it multiplied this figure by 9.5% in view of the French Government's decision to reduce by 3% with effect from 1 August 1970 the amount by which the franc had been devalued (12.5%). Taking Dark Northern Spring wheat (Application 11/71 and Manitoba wheat (Application 9/71) as examples of imports from third countries, the applicants produce figures to show that, as a result of devaluation, the purchase prices paid in Paris increased and that the applicants thereupon suffered a loss of

— FF 1.93 per quintal for the 1969/1970 marketing year (Application 11/71);

— FF 1.88 per quintal for the 1970/1971 marketing year (Application 9/71).

It is clear from the regulations in question, particularly Regulation No 1586/69, that their object was to prevent any particular group of traders from benefiting as a result of devaluation of the French franc. In fact devaluation has favoured French exporters and penalized French importers; this is why Article 3 of Regulation No 1586/69 provided that France should grant subsidies for imports and charge compensatory amounts on exports. The defendant did not, therefore, correctly apply the principles laid down by the said regulations or the principle of equality contained in the Treaty. Although it is true that Article 1 of Regulation No 1586/69 refers only to the intervention or purchase prices, those words must be looked at in the wider context of the system established by Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ, English Special Edition 1967, p. 33). That system introduced, *inter alia*, an intervention price for intra-Community trade and a threshold price for imports from third countries. Accordingly, although Regulation No 1586/69 provided for a subsidy for imports from third countries, its author acknowledged by implication that the subsidy, as opposed to the subsidy granted for imports from other Member States, cannot be calculated on the basis of the intervention price which is wholly unconnected with trade with third countries. Consequently, although Article 1(1) of Regulation No 1586/69 does not expressly refer to the threshold price this is to be attributed either to a clerical error or to the fact that the threshold price was included in the term 'purchase price' or, again, to the fact that the threshold price is linked to the intervention price, as Regulation No 120/67 provides that the latter is lower than the target price to which the former corresponds.

To permit the subsidy to be fixed on the basis solely of the intervention price leads, moreover, to an increase in prices to the producer and the consumer, as shown by the calculations mentioned above; such an effect is, of course, in conflict with the objectives set out in the preamble to Regulation No 1586/69.

Furthermore, fixing the subsidy in this manner by increasing the price of wheat imported from third countries to French importers and millers discriminates against the latter in favour of their opposite numbers in the other States of the Community, which is contrary to Article 40 of the Treaty. For this reason also, Regulation No 1586/69 is illegal, assuming that its meaning is really that attributed to it by the defendant.

Nevertheless, the validity of the arguments advanced by the applicants is confirmed by the actual provisions adopted by the defendant as a result of the 'alterations in the parity' of the German and Netherlands currencies (Regulation No 1014/71 of 17 May 1971, JO No L 110, p. 10). For the benefit of exporters from those countries, that regulation provides for two compensatory amounts varying according to whether the exports are made to other Member States or to third countries; in the latter case, the calculation was rightly based on the threshold price. Article 1 of Regulation No 974/71 of the Council of 12 May 1971 (OJ, English Special Edition

1971 (I), p. 257), a provision on the basis of which Regulation No 1014/71 was adopted, is practically identical to Article 3 of Regulation No 1586/69 and is of direct relevance to the present cases. There is very great similarity between the two situations and the defendant cannot argue the contrary from the fact that in Germany and the Netherlands there was only a 'disguised revaluation' whereas the devaluation of the French franc had been 'open and official'. In short, the defendant has therefore been guilty of further discrimination which once more invalidates the contested regulations.

The defendant cannot claim that the Council should be blamed for the contested act; the Community is liable and not one or other institution.

In reply, the *defendant* states that the applicants wholly misunderstand both the wording of Regulation No 1586/69 and the scope of all the measures adopted by the regulation and the objectives embodied therein.

Following the devaluation of the French franc, the Community was in a position either to adjust the common prices or the unit of account to the new situation or to accept that, in France, the common price system would in future be applied according to the new parity. The first alternative had to be avoided mainly because its effect would have been to lower the level of guaranteed prices in the other Member States. Consequently the Community adopted the second alternative, which meant that, because they remained at the same level in terms of units of account, all the elements of the common price system (threshold price, levies, export refunds, guaranteed prices for producers) rose by 12.5% when converted into French francs. No doubt French traders in this way found that the economic conditions under which they operated had changed. But, as confirmed by Regulation (EEC) No 1134/68 of the Council of 30 July 1968 on conditions for alterations to the value of the unit of account used for the common agricultural policy (OJ, English Special Edition 1968 (II), p. 396), it is obvious that those traders cannot claim that those conditions should be maintained as of right.

Regulation No 1586/69 is a measure of conjunctural policy. Aware of the fact that a sudden rise in prices to the consumer and the producer had to be avoided, the Council created a temporary and limited exception to the rule on the automatic and immediate increase in the amounts under the system of common prices when converted into French francs. This exception consisted in a reduction in the intervention and purchase prices to be paid by France which was intended to be absorbed and was indeed absorbed by the beginning of the 1971/1972 marketing year.

It was the effects of this reduction alone that the contested subsidy was designed to offset. The fact that Article 3 of Regulation No 1586/69 does not expressly refer to threshold prices was not therefore the result of a clerical error. These prices are not included in the term 'purchase prices' which is a technical term indicating, in certain organizations of the market, a guaranteed price for producers similar to the intervention prices provided for by other organizations of the market. The threshold price is a notional import price for wheat from third countries into the Community and not a price 'to be paid by France in respect of intervention on the domestic market' (Article 1(1) of the said regulation).

By reducing the intervention and purchase prices to be paid by France, this provision changed the level of these prices in relation to those applicable in the other Member States. In order to offset the effects of that change of level, Article 3 of the same regulation introduced compensatory amounts for exports intended to raise the price of French exports from the French level to the Community level and import subsidies intended to reduce the price of French imports from the Community level to the French level. As no measure had to be adopted in order to exempt France from the system of common prices applicable to trade with third countries, French imports from those countries had to be maintained under the same price conditions, in units of account, as those applicable to imports made by the other Member States from third countries. French imports from third countries, which

were subject to the same levies in units of account as imports made by the other Member States were, accordingly, priced at the same level as imports made by the other Member States and, so that they could come down from this Community level to the French level, had to receive the same subsidy as that granted for French imports originating in the Community.

If the defendant had calculated the contested subsidy on the basis of the threshold price it would have departed from the requirement laid down in Article 3 of Regulation No 1586/69. The Council clearly assumed that, as France was a country with a surplus, there was no need to compensate for all the effects of the devaluation, including the increase in the price of imported products. This also follows from the fact that, as a result of the French devaluation, it did not adopt measures implementing Regulation (EEC) No 653/68 of the Council of 30 May 1968 on conditions for alterations to the value of the unit of account used for the common agricultural policy (OJ, English Special Edition 1968 (I), p. 121).

The applicants cannot call in aid the method of calculation adopted by the defendant in fixing the compensatory amounts as a result of the widening of the margins of fluctuation of the Deutschmark and the florin, as the two situations are entirely different. Widening the margins of fluctuations of currency does not, in fact, have any effect as such on the system of prices fixed in units of account by the Community and on these prices as expressed in national currency. The result, however, is that the relationship between the value of the currencies of two Member States according to the daily rate of exchange may diverge substantially from the relationship between these two currencies in terms of their official parity expressed as units of account. As the defendant explains in detail, quoting figures and the example of Germany in support, this divergence may result in its proving, apparently, to be profitable for a French trader to sell only to the German intervention agency while German sales in France must be transacted below the intervention price converted into Deutschmarks or come to a standstill. It was therefore essential to authorize Germany by Regulation No 974/71 (like the Netherlands and, subsequently, all the Benelux countries) to levy compensatory amounts on imports from Member States and to grant them on exports to those States.

The above-mentioned divergence could also have had the result that trade with third countries was transacted at a price which, in national currency, was below the intervention prices. With regard to trade with third countries, however, it was necessary to fix different compensatory amounts from those to be applied to intra-Community trade if deflection of trade was to be avoided. In fact, as the defendant endeavours to demonstrate by means of figures, in the absence of such a measure, a German trader might find it advantageous to make his imports from third countries only through France, just as a French trader might find it advantageous to make his imports only through Germany.

Moreover one need only compare the provisions which the defendant had to apply, on the one hand, in the case of France and, on the other, in the case of Germany and the Netherlands (Article 3(1) of Regulation No 1586/69 and Article 2(1) of Regulation No 974/71) to be convinced that, contrary to the contention of the applicants, these provisions differ both as to the reasons upon which they are based and as to their operative parts.

Finally, the applicants are mistaken in claiming that they should receive the same treatment as that extended to German exporters and millers as a result of the 'alteration in the parity' of the Deutschmark and the guilder. The compensatory amounts on exports from Germany were calculated by applying the difference between the official parity and the current daily rate of exchange to the cif price and not to the threshold price. If the defendant had acted in accordance with the applicant's wishes, the amount of import subsidy which they receive would have been lower because the cif price was lower than the intervention price laid down in the contested regulations.

In any case, even if the comparison made

by the applicants were relevant it would only partly justify their claims; in fact, as their tables show, they claim that the subsidy also compensates for the increase in French francs of the levy.

Finally, if the complaint based on infringement of the 'principle of equality between the parties which results from the Treaty' were justified, it would be clear from the foregoing that the cause of this infringement is Regulation No 1586/69, that is to say, an act of the Council. Apart from that, the complaint is ill-founded because, assuming that such a principle can be extracted from the Treaty, this does not alter the fact that, at the present stage of the Community's development, the field in which the applicants claim to have this principle applied to them does not lie within the province of the Community legislature. The disadvantages suffered by the applicants are the outcome of a decision taken independently by a Member State.

On the question of the protective rôle of the provisions alleged to have been infringed and of liability and responsibility, the *applicants* state that the regulations concerned were also intended to safeguard the interests of importers of foreign wheat, including the applicants.

It is clear from the development described above that the manner in which the defendant calculated the contested subsidies amounted to culpable negligence. According to the case-law of the Court, it is not only cases in which the wrongful act or omission is serious in which liability is incurred by the administration. Moreover, any illegality in the making of regulations must be treated as constituting a wrongful act or omission because regulations are normally adopted 'deliberately and in an atmosphere conducive to thought'. Furthermore, the defendant had periods of sufficient length to adopt the contested regulations.

The defendant is also at fault because, in adopting Regulation No 1074/71, it did not amend the contested regulations although, in both cases, the effect of a 'currency manipulation' upon the functioning of the organization of the common market in cereals had to be countered.

Finally, even if the Court does not accept the existence of a wrongful act or omission, the Community is nevertheless liable. In fact, even in the absence of illegality, the French Conseil d'État acknowledges the liability of the administration as soon as there is 'abnormal and special damage'. This applies to the present case since the applicants have been placed at a disadvantage compared with the millers of the Member States other than France (Regulations Nos 1586/69, 1670/69 and 1505/70) and, again, compared with German and Netherlands millers (Regulations Nos 974/71 and 1074/71). The damage sustained was particularly serious, amounting to about FF 1 400 000, because the quantities imported during the 1969/1970 and 1970/1971 marketing year were, respectively, 466 970 and 296 000 quintals.

In reply the *defendant* contends that, even if the contested act amounted to an illegality, the illegality is not the result of negligence but of a misinterpretation of the regulations, which is all the more excusable because the interpretation which the defendant placed on Regulation No 1505/70 was confirmed by the judgments of the Court delivered on 16 April 1970 in Cases 63, 64 and 65/69 ([1970] ECR 205, 221 and 229).

Inasmuch as the applicants state that any illegality constitutes a wrongful act it must be pointed out that no justification can be found for this argument either in any principle common to the Member States or in the case-law of the Court. On the contrary, the Court has accepted that mistakes of law may be the result of the difficult nature of the problems to be solved. Moreover, in order to appraise whether any mistake which the defendant may have made constituted a wrongful act, the fact cannot be ignored that the Management Committee, whose opinion the defendant was required to obtain before adopting the contested regulations, decided unanimously in favour of the proposals which were submitted to it. Finally, the defendant was forced to execute Regulation No 1586/69 very quickly.

As for the principle of liability without any wrongful act or omission, its existence is contested by some of the learned writers

on Community law. Even if such liability exists in certain cases it is still doubtful whether these case include a breach of the principle of equality before the administration.

The damage complained of does not appear to be either 'abnormal' or 'special'. It could only be 'abnormal' if the exclusive activity of the applicants were importing cereals from third countries. Moreover, damage affecting a whole branch of industry is not of a 'special' nature.

As for the damage and the relation of cause and effect, the *applicants* state that the Compagnie d'Approvisonnement, through which the imports were made, has a moral interest in joining in the action brought by Grands Moulins which, in the last resort, is suffering the damage claimed.

This was identical to the loss suffered by the importer on each quintal of wheat imported by it into France, namely FF 1.93 in the case of the 1969/1970 marketing year and FF 1.88 in the case of the 1970/1971 marketing year. This loss was the result of the increase in the purchase price which could not be passed on to the consumers. The applicants were unable to abandon the said imports because they consisted in wheat of high milling value intended to increase the quality of flours and were vital to the national economy.

The relationship of cause and effect which exists between the loss and the contested provisions is clear.

As the Court has accepted that an application for damages need not state from the first the total damages claimed, the applicants are justified in requesting that the amount should be determined by an expert's report.

The *defendant* contends that the applicants are, in fact, seeking the *restitutio in integrum* provided for in Article 176 of the Treaty when an act has been declared void.

The evidence put forward by the applicants seems to refer only to the correctness of the amount by which the subsidies fixed by the Commission differ from those to which the applicants consider themselves to be entitled. It must also, however, be established what caused the alleged damage, what the loss which the applicants regard themselves as having sustained corresponds to, and how the factors for the adoption of which they ask in order to assess the damage are justified. In this connexion, the following comments must be made.

— It seems unlikely that the cause of the alleged damage is the need for the applicants to carry out all the imports in question. Without denying that this may be true in the case of some current contracts, it seems more likely that the applicants decided of their own free will to continue importing foreign wheat despite the increased purchase price and the grant of subsidies of an amount which they considered inadequate.

— In assessing the loss sustained at FF 1.88 or 1.93 per quintal, the applicants fail to indicate whether they had to reduce their profit margins to that extent because of the total impossibility of passing on the increase in the price of imported products to the selling prices which they charged.

— Finally, it is clear from the very statements of the applicants that the Compagnie d'Approvisionnement cannot claim the existence of damage of its own as its role was merely that of an agent, which did not suffer the alleged loss, for Grands Moulins.

In conclusion, there seems to be a contradiction in the applicants' statement: if the products which they import are essential to the national economy, it is difficult to understand why they were not in a position to make their customers bear the increase in the price of the said products.

B — Requests for annulment

The *applicants* contend that it is clear from their statement with regard to the applications for damages that the refusal by the defendant to recognize their right thereto must also be annulled. The defendant is wrong in considering that, in order to grant the applicants' request, it would have been obliged to annul the contested provisions; it would have been sufficient for it

to recognize that the provisions could not be set up against the applicants.

The *defendant* replies that the absence of any justification for the requests for annulment is already clear from the fact that the submission based on the illegality of the contested subsidies is ill-founded.

Furthermore, even assuming that the Court accepted that this illegality existed, the 'decisions' of refusal would nevertheless be proper. In order to recognize the entitlement of the applicants to compensation, the defendant would first have had to annul the contested provisions and replace them with other provisions which met the applicants' requirements, but the applicants cannot claim any such entitlement. As regards, more particularly, the 'implied decisions of refusal', it follows from the foregoing that the applicants are endeavouring to have the defendant censured for failing to adopt a new regulation. But Article 175 of the Treaty does not give individuals the right to claim that there has been a failure to exercise legislative power.

Grounds of judgment

1 The present applications, lodged on 16 and 18 March 1971 respectively, seek to obtain recognition that the applicants are entitled to compensation for the damage they were caused by a wrongful act of the Commission in that, under its Regulations Nos 1670/69 and 1505/70, the latter fixed at an inadequate level the subsidies to be granted by the French Republic on imports of common wheat and meslin from third countries as a result of the devaluation of the French franc in 1969.

2 Furthermore, the applicants seek annulment of the implied or express decisions by which the defendant rejected their requests, made before proceedings were commenced and submitted by letters of 15 November (Application 11/71) and 16 November 1970 (Application 9/71), in which they sought recognition by the defendant of the above-mentioned entitlement to compensation.

Admissibility

1. *The claims 'for compensation'*

3 The defendant contests the admissibility of the claims for compensation on the ground that, since the applicants calculate the damage as the exact difference between the subsidies resulting from the contested regulations and those which would result from regulations adopted in accordance with their wishes, these applications contrive to circumvent the inadmissibility which, under Article 173 of the EEC Treaty, prevents an application for the annulment of the said regulations.

4 The action for damages provided for under Articles 178 and 215 of the Treaty was established as an independent remedy; its specific function comes within the frame-

work of the system of legal remedies and it is subject to the conditions laid down for its exercise in the light of its specific purpose.

5 The action differs from an application for annulment in that it seeks compensation for damage caused by an institution in the exercise of its functions and not abolition of a specific measure.

6 Applications for compensation seek solely the recognition of a right to compensation and, therefore, to a payment intended to affect the applicants alone.

7 These applications are therefore admissible.

2. *The applications 'for annulment'*

8 According to the applicants, these applications are based on Articles 173 and 175 of the EEC Treaty.

9 In spite of the defective wording of their conclusions, the latter are, therefore, for either annulment of the defendant's refusal to recognize the right to compensation which the applicants claim on the basis of Articles 178 and 215 of the Treaty or a declaration by the Court that the defendant must acknowledge the existence of this right.

10 Consequently, these applications are for a declaration that the Commission is obliged to make compensation.

11 Since the applicants therefore have no interest in submitting these applications in addition to the claims for compensation, the former must be dismissed as inadmissible without the need for inquiry whether they are inadmissible also on the basis of the submissions made by the defendant.

Substance of the claims for compensation

1. *The submission based on the illegality of Regulations Nos 1670/69 and 1505/70*

12 The applicants state that the damage which they have sustained is the result of an illegal action, on the part of the Commission, for which it has incurred liability, whereby it fixed the contested subsidy first at FF 58.49 (Annex to Regulation No 1670/69, heading A, heading 10.01 A of the Common Customs Tariff) and later at FF 44.43 per metric ton (Annex to Regulation No 1505/70, heading A, heading 10.01 A of the Common Customs Tariff).

13 Since legislative measures involving measures of economic policy are concerned,

the Community does not incur such liability for damage suffered by individuals as a consequence of those measures by virtue of the provisions in the second paragraph of Article 215 of the Treaty unless a sufficiently flagrant violation of a superior rule of law for the protection of the individual has occurred.

14 For that reason, the Court, in the present case, must first consider whether such a violation has occurred.

15 A — The applicants contend, first, that, contrary to Regulations Nos 1586/69 and 1432/70 of the Council, on the basis of which the contested regulations of the Commission were adopted, the above amounts were calculated so as to compensate only for the fall in the intervention prices to be paid by the French Republic and not for the whole of the increase in the price of wheat imported from third countries owing to the devaluation of the French franc, when account is also taken of the threshold price and the levy.

16 Under Article 3 of Regulation No 1586/69, 'France shall grant subsidies for imports from Member States and third countries', 'in so far as it is necessary to compensate for the effects of the measures referred to in Articles 1 and 2' of the same regulation.

17 Under the first paragraph of Article 1(1) of that regulation, 'The intervention or purchase prices to be paid by France in accordance with the regulations on the common organization of the agricultural markets, in respect of intervention on the internal market, shall be reduced by 11.11% in the sector concerned until the end of the 1969/1970 marketing year'.

18 Under Article 1(2) of the regulation, 'the Council ... shall decide in respect of each product, before the end of the 1969/1970 marketing year, on the final adaptation to the common prices and amounts of the prices and amounts referred to in Articles 1 and 2'.

19 Article 1(1) of Regulation No 1432/70 of the Council provides in application of that provision that 'Until the end of the 1970/1971 marketing year, the following prices to be paid by France in accordance with regulations on the common organization of the agricultural markets, because of interventions on the internal market, shall be reduced by ... 8.44% as regards the intervention price for common wheat and durum wheat'.

20 Finally, Article 2 of Regulation No 1586/69 provides for the reduction of the 'amounts to be paid by France, in accordance with the regulations on the common organization of the agricultural markets, by reason of other interventions on the internal market within the meaning of Articles 5 and 6 of Regulation No 17/64/EEC of the Council of 5 February 1964'.

21 It follows from these provisions as a whole that the measures for whose effects the contested subsidies were intended to compensate were exclusively concerned with the amounts to be paid by the French Republic in the context of that Member State's interventions on the internal market, and not with the amounts which, like the levy imposed on imports of cereals, relate to trade with third countries and must be paid by traders.

22 Nothing in Regulations Nos 1586/69 or 1432/70 justifies the assumption that the Council intended to compensate for all the effects of the devaluation of the French franc on the purchase price, expressed in that currency, of cereals from third countries imported into France.

23 The applicants mistakenly endeavour to contest this interpretation on the ground that Article 1(1) of Regulation No 1586/69 refers to 'the intervention *or purchase* prices'.

24 The term 'purchase price' is explained by the fact that certain provisions relating to a common organization of the markets, such as Articles 4(1) and 7 of Regulation No 159/66 of the Council of 25 October 1966 on fruit and vegetables (JO No 192, pp. 3288 and 3289), use it to indicate a price having a function analogous to that of the 'intervention price' referred to, for example, in Articles 2, 4 and 7 of Regulation No 120/67 of the Council on the common organization of the market in cereals, to the effect that in each case these are prices at which the Member States are obliged or authorized to buy the products offered them through bodies or persons appointed for that purpose.

25 In these circumstances, the Commission correctly applied Regulations Nos 1586/69 and 1432/70 and the first submission cannot be upheld.

26 B — The applicants then accuse the Commission of having infringed Article 40 of the Treaty by creating discrimination between French importers and millers on the one hand and, on the other, their opposite numbers in the other Member States, because the latter did not have to bear any increase in the prices of imports from third countries as the result of the devaluation of the French franc.

27 They claim that even if the Commission had complied with Regulations Nos 1586/69 and 1432/70 of the Council, these provisions were, for that reason, vitiated by illegality.

28 The preamble to Regulation No 1586/69, which was the basis for Regulation No 1432/70, refers, in particular, to Article 103 of the Treaty in the following terms: 'Whereas with effect from 11 August 1969, the ratio between the parity of France's currency and the value of the unit of account was altered by 11.11% by decision of the French Republic'.

29 Under Article 103 of the Treaty, 'Member States shall regard their conjunctural polices as a matter of common concern' and 'They shall consult each other and the Commission on the measures to be taken in the light of the prevailing circumstances', while 'the Council may ... decide upon the measures appropriate to the situation'.

30 It is clear from Article 107 that it is for each Member State to decide upon any alteration in the rate of exchange of its currency under the conditions laid down by that provision.

31 If such an alteration puts importers and exporters in the State concerned in a position different from that of their opposite numbers in other Member States, this disparity is the result of the actual decision of that Member State and not of Community intervention.

32 Although the powers conferred on the Community institutions by the Treaty, in particular by Article 103(2) thereof, pursuant to which the Council adopted Regulations Nos 1586/69 and 1432/70, include the power to alleviate, in the common interest, certain effects of a devaluation or of a revaluation, it does not follow that the Council must compensate for all these effects in so far as they are adverse to the importers or exporters of the Member State concerned.

33 In fact, by empowering the Council to 'decide upon the measures appropriate to the situation', without obliging it to do so, Article 103 conferred on that institution a wide power of discretion to be exercised in accordance with the 'common interest' and not with the individual interests of a specific group of traders.

34 The applicants have not proved or offered evidence that in this case the common interest required that there should be full compensation for the increase in the price of cereals from third countries imported into France as a result of the devaluation of the French franc.

35 It follows from all the foregoing considerations that the complaint that Article 40 has been infringed must be dismissed.

36 C — Finally, the applicants claim to be the victims of further discrimination on the ground that Regulation No 1014/71 of the Commission of 17 May 1971 adopted as a result of the temporary widening of the margins of fluctuation for the currencies of the Federal Republic of Germany and of the Kingdom of the Netherlands, fixed the compensatory amounts which those States were authorized to grant on exports to third countries at a level which took into account all the effects of the said widening on export prices.

37 They claim that, consequently, the Commission treated German and Netherlands

exporters more favourably than French importers without good reason.

38 This submission may also be understood as a criticism of the fact that, in adopting Regulation No 1014/71, the Commission did not reconsider Regulations Nos 1670/69 and 1505/70, the inadequacy of which was recognized by implication.

39 The validity of a regulation cannot be called in question because of events which took place at a later date.

40 Moreover, the regulations which form the basis of this case refer to a situation different from that to which those regulations concerning the German and Netherlands currency fluctuations refer.

41 The economic situations resulting from, on the one hand, the devaluation of the French franc and, on the other, the temporary widening of the margins of fluctuation for the German and Netherlands currencies are sufficiently different to rule out the alleged discrimination.

42 Furthermore, since the main objective of the common agricultural policy is, according to Article 39(1)(b) of the Treaty, 'to ensure a fair standard of living for the agricultural Community, in particular by increasing the individual earnings of persons engaged in agriculture' there may be greater justification for supporting the exportation of agricultural products to third countries rather than the importation of those products.

43 The complaint of discrimination must therefore be dismissed.

44 D — It follows from all the foregoing considerations that the contested provisions of Regulations Nos 1670/69 and 1505/70 are not vitiated by illegality and it would, therefore, serve no purpose to examine the other conditions giving rise to liability for a wrongful act.

2. *The submission based on liability in the absence of illegality*

45 The applicants claim that the Community incurs liability even in the absence of illegality because the applicants have suffered 'unusual and special damage' owing to the fact that they were treated less favourably than, first, importers from Member States other than France and, secondly, than German and Netherlands exporters.

46 Any liability for a valid legislative measure is inconceivable in a situation like that in the present case since the measures adopted by the Commission were only intended to alleviate, in the general economic interest, the consequences which

resulted in particular for all French importers from the national decision to devalue the franc.

47 Consequently, the submission is unfounded.

Costs

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

45 The applicants have failed in their submissions.

50 They must, therefore, be ordered to bear the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 39, 40, 103, 107, 173, 175, 178 and 215;
Having regard to Regulation No 1586/69 of the Council of 11 August 1969 and Regulation No 1432/70 of the Council of 20 July 1970;
Having regard to Regulations Nos 1670/69 of 22 August 1969, 1505/70 of 28 July 1970 and 1014/71 of 17 May 1971 of the Commission;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69;

THE COURT

hereby:

1. Dismisses the applications for annulment as inadmissible;

2. Dismisses the claims for compensation as unfounded;

3. Orders the applicants to bear the costs of the action.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 13 June 1972.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE DELIVERED ON 14 JULY 1971[1]

Mr President,
Members of the Court,

Grands Moulins de Paris and the Compagnie d'Approvisionnement, de transport et de crédit are two big French undertakings, which are closely linked and specialize in trade in and the processing of cereals.

The origin of their dispute with the Community is as follows:

As a result of the devaluation of the franc in 1969, the Council decided, as one of various measures which it adopted concerning agriculture, that France should grant subsidies for imports of cereal products from the Member States and third countries and that the Commission should fix the amount of and the procedure for granting those subsidies. As regards common wheat and meslin, the amount was fixed first, on 22 August 1969, at FF 58.49 per metric ton and then, on 28 July 1970, at FF 44.43.

The applicants consider that, by fixing the subsidies at these amounts, the Commission infringed the provisions of the regulations of the Council empowering it to adopt such measures, and they sought various legal remedies to enable them to escape the pecuniary consequences which those measures might have for them.

To this end, the Compagnie d'Approvisionnement first tried to obtain the annulment of the Regulation of the Commission of 22 August 1969, in that it fixed the amount of the subsidy at FF 58.49, solely by means of an application for annulment lodged under Article 173 of the Treaty.

But, in its judgment of 16 April 1970 in Case 65/69 this Court dismissed that application as inadmissible on the ground that, as the contested measure was in the nature of a regulation and was not of individual concern to the applicant, the application provided for under Article 173 of the Treaty was not available to the undertaking concerned. Thereupon the latter and Grands Moulins lodged two successive applications before the Commission, the first of them concerning the implementation of the 1969 regulations, the second concerning the implementation of the 1970 regulations.

In these two applications those undertakings asked the Commission:

(1) to recognize their right to compensation for the damage caused them by the application of the regulations which, in their view, were unlawful,

(2) as a 'test case' as it were, to annul an import certificate issued by the French authorities and a decision taken by the same authorities settling their charges

1 — Translated from the French.