JUDGMENT OF THE COURT
2 DECEMBER 1971[1]

Aktien-Zuckerfabrik Schöppenstedt v Council of the European Communities

Case 5/71

Summary

1. *Procedure — Action for damages — Autonomous nature — Difference between such action and an application for annulment*
(EEC Teraty, Article 178, Article 215)

2. *Procedure — Action for damages — Alternative claim for 'another form' of compensation — Inadmissibility*

3. *EEC — Non-contractual liability — Legislative measure involving choices of policy — Damage — Violation of a superior rule of law*
(EEC Treaty, Article 215)

1. The action for damages provided for by Articles 178 and 215 of the Treaty was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific nature. It differs from an application for annulment in that its end is not the abolition of a particular measure, but compensation for damage caused by an institution.
2. A claim for an unspecified form of damages is not sufficiently concrete and must therefore be regarded as inadmissible.
3. Where legislative action involving choices of economic policy is concerned, the Community does not incur non-contractual liability for damage suffered by individuals as a consequence of that action, by virtue of the provisions contained in Article 215, second paragraph, of the Treaty, unless a sufficiently flagrant violation of a superior rule of law for the protection of the individual has occurred.

In Case 5/71

AKTIEN-ZUCKERFABRIK SCHÖPPENSTEDT, Schöppenstedt (Lower Saxony), represented by Rudolf Schrader, Chairman, and Alfred Isensee, Vice-Chairman of the Board of Directors, assisted by Arved Deringer, Claus Tessin, Hansjürgen Herrmann and Jochim Sedemund, Advocates, of the Cologne Bar, with an address for service in Luxembourg at the Chambers of Marc Baden, Advocate, 1 boulevard Prince-Henri,

applicant,

1 — Language of the Case: German.

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by Ernst Wohlfahrt, Director-General of the Legal Department of the Council, acting as Agent, assisted by Hans Jürgen Lambers, Legal Adviser of the Council, with an address for service in Luxembourg at the Chambers of J.N. Van den Houten, Director of the Legal Department of the European Investment Bank, 2 place de Metz,

defendant,

Application for damages under the second paragraph of Article 215 of the EEC Treaty, as compensation for damage caused by Regulation No 769/68 of the Council laying down the measures needed to offset the difference between the national sugar prices and the prices valid from 1 July 1968,

THE COURT

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

Advocate-General: K. Roemer

Registrar: A. Van Houtte

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. On 1 July 1968 the national organization of the market in sugar was replaced by the 'common organization of the market in sugar' set up by Regulation No 1009/67 of the Council of 18 December 1967 (OJ 1967, No 308) Article 37 (1) of this regulation provides:

> 'The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall in respect of sugar in stock on 1 July 1968 adopt provisions concerning the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968.'

On the basis of this article, the Council issued in Regulation No 769/68 of 18 June 1968 (OJ 1968, L 143) the 'measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968'. Under Article 1 of this regulation:

'1. The Member State in which the price of white sugar of the standard quality laid down on the fixing for 100 kgs on 30 June 1968, free of duty, unpacked, ex-factory, loaded on to a means of transport, is lower than the intervention price of white sugar valid from 1 July 1968 in the area having the largest surplus in the Community, shall make a fresh inventory of the quantities of white sugar and raw sugar above 1 000 kgs per holder which at 0.00 hours on 1 July 1968 is in free circulation in its territory.

2. On the quantities referred to in paragraph 1, apart from working stock, a levy shall be made to bring the price of 100 kgs of sugar of the relevant quality on 30 June 1968, free of duty, unpacked, ex-factory, loaded on to a means of transport, to the level of the intervention price for white or raw sugar, as appropriate, applying in the area in which the sugar is . . .'

According to Article 2 (1):

'The Member State in which the price on 30 June 1968 of 100 kgs of white sugar of the standard quality laid down at the time of fixing, free of duty, unpacked, ex-factory, loaded on to a means of transport, is higher than the derived intervention price referred to in Article 2 (1)(a) or (c) of Regulation (EEC) No 432/68 valid from 1 July 1968 in the Member State concerned, increased by the difference between the intervention price and the target price, shall be authorized to grant compensation in relation to the quantities of white sugar and raw sugar which at 0.00 hours on 1 July 1968 is in free circulation in its territory.'

The amount of this compensation per 100 kgs is calculated in accordance with paragraph 2. Moreover, the first recital of this regulation states, with regard to the compensation measures laid down, that 'measures shall be necessary only in cases where this difference is not marginal'.

Since the difference between the former price of white sugar valid in Germany on 30 June 1968 and the new price valid from 1 July 1968, calculated in accordance with the aforementioned regulation, appeared 'marginal', there was no compensation either for white sugar or raw sugar granted in the Federal Republic of Germany.

The applicant, which is a raw sugar factory, maintains that the former price of raw sugar which was required to be taken into consideration in Germany until 30 June 1968 was appreciably higher than that valid from 1 July 1968, and the difference between the two prices was therefore not marginal. It considers that by reason of this rule, the Council has caused it damage which entitles it to compensation under the second paragraph of Article 215 of the EEC Treaty.

2. Having applied to the Council without success for compensation, the applicant filed the present application on 13 February 1971.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure and to hear as a preliminary issue the parties on the question of the admissibility of the application.

The parties presented oral argument at the hearings on 29 June 1971 and 22 September 1971.

The Advocate-General delivered his opinions at the hearings on 13 July 1971 and 13 October 1971.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'(1) Order the defendant

(a) to pay to the applicant the sum of 38 852.78 units of account;

(b) alternatively, compensate in another form for the damage

caused by Regulation No 769/68;

(2) Order the defendant to pay the costs.'

The *Council* contends that the Court should:

'Dismiss the application as inadmissible, alternatively as unfounded, and order the applicant to pay the costs.'

III — Submissions and arguments of the parties

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

Admissibility

The *applicant* maintains that the Council has in adopting Regulation No 769/68 been guilty of a wrongful act or omission by disregarding certain provisions of Community law in the nature of 'Schutznormen' (protective rules). The blame ('culpa') for this wrongful act or omission must rest with the Council.

It also seeks in its application an order that the Council pay it in the first place the sum of 48 076.35 u.a., that is, DM 192 305.38 representing the total loss of profit as a result of the said wrongful act or omission. In its reply it limits its application to the payment of 38 852.78 u.a., that is DM 155 411.13 representing the difference between the new intervention price of raw sugar and the price at which the quantities in stock were in fact sold. The applicant explains that far from adopting a new criterion of assessment, it is merely deducting from the damage suffered the amounts actually obtained above the intervention price.

The *defendant* expresses doubts about the admissibility of the application. The principal conclusions are in fact, by the expedient of an application for damages, directed to obtaining compensation to which the applicant would be entitled if the contested regulation had contained the criteria demanded by the applicant instead of those laid down by the Council. Moreover, the sum claimed would involve not only the repeal of the contested rules but also their replacement by new rules.

For all these reasons, to recognize the present application as admissible would be to give the applicant, in the form of an action for damages, an action which the Treaty did not give it and further violate the fundamental principle that it is not for the Court to order directly the replacement of rules contrary to the Treaty by a particular set of rules.

After referring to the other possibilities (Articles 177 and 184 of the Treaty) which may be available to individuals for the purpose of objecting to the illegality of a regulation, the defendant states that in the present case it is not challenging the admissibility of the application on the ground that claims for damages cannot be made in respect of a regulation. It merely seeks to protest against the tendency to palliate the limitation on the individual's right of action in respect of Community rules, intended by the Treaty, by actions for compensation the subject-matter of which is in fact different from that of a true action for damages.

The defendant considers moreover that the alternative claim is inadmissible since its subject-matter is not clearly stated and it is wholly lacking in any statement of the grounds relied on.

In reply the *applicant* says that the objective of its action is neither a new set of rules nor full compensation for the difference between the former and the new (intervention) price of raw sugar but solely compensation for the damage actually suffered. The limitation of the amount of the claim to 38 852.78 u.a. contained in the reply is patent evidence of this.

After observing that it is not always possible to remedy by means of Articles 177 or 184 of the Treaty the limitations which the system of the Treaty puts on the right of action of individuals re-

garding in particular the possibility of contesting regulations, the applicant draws attention to the danger that any further limitation of this right would present for the legal protection of individuals, having regard in particular to the fact that

— since parliamentary control of the Council is inadequate, one should be able to count on as efficacious as possible a control by the Court;

— numerous regulations are in practice prepared not by ministers or permanent representatives but by national officials unknown to the public and not responsible to it.

Having stressed the substantial differences which, in its opinion, exist between the action for annulment and the action for compensation, the applicant concludes that it would be wrong to refuse any legal protection to individuals who do not have a direct right of action in the event of their having suffered damage as a result of a wrongful act or omission on the part of an institution. It refers to the principle according to which a provision granting legal protection should not, in the event of doubt, be interpreted in a sense unfavourable to those to whom it applies.

The *defendant* replies that by limiting the main claim to 38 852.78 u.a. the applicant has not altered the nature of its claim for it is still a claim for the payment of compensation calculated according to criteria differing from those contained in the contested rules.

It further remarks:

— the argument that control by the Court should be extended because of the inadequate nature of parliamentary control of the Council seems to disregard the distinction between the role of the Court and that of Parliament;

— as for the argument that numerous resolutions of the Council are adopted by national officials unknown to the public having no responsibility to it, such a practice, which is moreover not unknown to the States, 'is no more detrimental to the legal conscience' in the Community than in the States.

The defendant concludes by observing that in the present case it is not a question whether a rule relating to the legal protection of those subject to administrative authority must where there is doubt be interpreted in their favour, but to safeguard by a definition appropriate to each category of action, the coherence of the system laid down by the Treaty in contentious matters.

The substance of the case

1. The irregular nature of Regulation No 769/68

The *applicant* maintains that the Council in adopting Regulation No 769/68 was guilty of a wrongful act or omission in that the regulation infringes the rules of Community law in the following respects:

(a) *Infringement of Article 37 (1) of Regulation No 1009/67*

It appears from this provision that the Council is *bound* to adopt all the provisions needed to offset the difference in price of sugar in stock on 1 July 1968. If the former national prices valid in Germany in respect of raw sugar were shown after conversion to be higher than the prices valid as from the said date, the Council had therefore to adopt provisions to offset this difference. Instead of leaving the solution of the problem to a later body of rules, the Council had settled the question in such a way that the manufacturers of raw sugar would not obtain any compensation.

(b) *Infringement of the second subparagraph of Article 40 (3) of the Treaty and the principle of equality*

According to the applicant the contested rules infringe Article 40 and the prin-

ciple of equality since their effect is to accord unequal treatment to the raw sugar factories in the Member States, which can in every case be regarded as similar undertakings. The unequal treatment consists:

— *in the first place,* in the fact that for the levy of the compensatory dues and for the payment of the compensatory amount, Regulation No 769/68 takes account only of the differences in respect of *white sugar*; the final version of this regulation differs on this point from the draft;

— *in the second place,* in the fact of assuming that the relationship between the former and new price of raw sugar is always the same as that between the former and new price of white sugar;

— *in the third place,* in the fact of having made the compensation and the compensatory dues depend on different factors: the *intervention price* in the one case and the *target price* in the other (or more exactly, the derived intervention price increased by the difference between the intervention price and the target price); the rules in question thus do not treat the dues and compensation in the same way.

The *defendant's* reply to these allegations runs essentially as follows:

(a) *Infringement of Article 37 (1) of Regulation No 1009/67*

The former German organization of the sugar market provided fixed prices for sugar which producers and dealers were bound to respect whereas the EEC price system established in this sector contains a framework of prices which is not obligatory for producers and dealers and within which the effective price level depends largely on the market. Article 37 (1) of Regulation No 1009/67 has not settled the question in respect of which new prices (intervention price, derived intervention price and target price) the compensatory measures to be adopted had to be drawn up.

In these circumstances it was conceivable to take into consideration the lowest price in the framework, that is the intervention price, for the changeover of countries 'with low prices' to the new organization of the market and on the other hand the highest price, that is to say, the target price, in the case of countries 'with high prices', in laying down the conditions on which compensation should be granted. This is exactly what Regulation No 769/68 did in Articles 1 and 2 (1).

In this latter provision the Council laid down the conditions of compensation not only for white sugar but also for raw sugar. The choice of criterion adopted cannot be criticized on the basis of Regulation No 1009/67, especially since Article 37 thereof leaves the Council a certain discretion in specifying the detailed conditions. Moreover, since the German price of raw sugar was not, contrary to what the applicant says, lower than the EEC prices to be taken into account, the Council was not bound to adopt special provisions for this case. Finally, the contested rules are in accordance with the Commission's proposal, the conception of which has not been materially altered. The argument relied on by the applicant moreover is irrelevant in the solution of the problem in question.

(b) *Infringement of the second subparagraph of Article 40 (3) of the Treaty and of the principle of equality*

— The contested rules are in no way based on the assumption that the relationship between the former and the new price of raw sugar is always exactly the same as that between the former and the new price of white sugar. It is on the other hand indisputable that raw sugar has its price diminished by the margin corresponding to the processing into white sugar and this margin, even if it is fixed

on a flat rate or average basis, does not involve large differences from one Member State to another.

— Any comparison must be made on a precise basis. If, instead of comparing the new target price with the former price for white sugar and the new intervention price with the former price for raw sugar, a correct comparison was made, both in respect of raw sugar and white sugar, of the former national price with the highest corresponding price within the framework of the EEC prices, the applicant would find it difficult to discover a single State in which the relationship between the former price and the new price in the case of raw sugar was reversed as it was in the case of white sugar.

— The fact of having compared the former prices with two new different prices according to whether it related to dues or compensation is the logical consequence of the structure given to the common organization of the market, which has substituted a system of a framework of prices for a system of fixed prices. The Council has not discriminated in any way, since the case of all the former prices which remained within the limits of this framework it has prescribed no compensatory measures and it has taken into account the lower limit and the higher limit both in the case of white sugar and in that of raw sugar. The examples cited by the applicant in support of its argument are moreover of a hypothetical nature and for this reason cannot be evidence of misuse of powers.

The *applicant*, after having analysed the structure of the former system of German prices, observes:

— The former German price is comparable to the present intervention price and not the target price;

— It had necessarily to suffer a loss and this is precisely why Article 37 (1) of Regulation No 1009/67 provided compensation for such loss;

— The Council itself has recognized in Article 2 (2) of Regulation No 769/68 that it is the intervention price and not the target price which plays a determining role for the purposes of the said compensation;

— The inequality of treatment arises in the present case from the fact that producers of raw sugar in countries 'with high prices' were refused compensation by reason of the fact that it is calculated on a higher basis (target price) than that (intervention price) used in the computation and in the levying of the dues.

The *defendant* objects that since the principles of market economy had to be re-introduced in the sugar sector, it was not possible to guarantee raw sugar factories in countries 'with high prices' compensation based on the lower limit of the chosen price framework. This would have been possible only if the Council had prohibited from the beginning any divergence of the actual price from the intervention price, that is to say, if it had continued to maintain a system of fixed prices. Moreover the criterion advocated by the applicant would have led to the factories in countries 'with high prices' to be taken into account receiving twice the difference between the intervention price and the market price: first as part of the compensatory payment and secondly in the market price.

2. The existence of a wrongful act or omission

The *applicant* maintains that there is undoubtedly a wrongful act or omission in the event of violation of Community law and in particular when it is a question of a provision having the nature of a 'Schutznorm'. This is precisely the nature of many prohibitions against discrimination contained in the Treaty.

The wrongful act or omission in the present case is the responsibility of the Council which, when preparing Regulation No 769/68, knew the problem raised by the German sugar factories.

The applicant states moreover that there is also a causal link between this wrongful act or omission and the damage which it has suffered, for, assuming that the Council gave the Federal Government the necessary authorization, the latter could not, without contravening the provisions of Community law, have failed to use it.

The claim for compensation for damage suffered is finally not incompatible with the fact that Regulation No 769/68 has not so far been annulled. The applicant considers in this respect the scope of the judgment of the Court of 15 July 1963 in Case 25/62 *Plaumann & Co.* v *Commission of the EEC* (suspension of customs duties) [1963] ECR 95.

After giving its opinion on this latter point, the *defendant* in answer says that since the provisions of Community law cited by the applicant have not been infringed and since no other factor which might constitute a wrongful act or omission has been cited, the allegation of a wrongful act or omission is unfounded in the present case. In the absence of such a wrongful act or omission there can be no question either of negligence on the part of the Council.

As for the causal link of the damage, it must not be forgotten that Article 2 of Regulation No 769/68 only empowers the States in question to grant such compensation. Any damage could equally have occurred if the Federal Republic, whilst having received authorization to grant the compensation in question, had not used it.

Finally, as regards the amount of the damage alleged, the defendant after pointing out that the information supplied by the applicant is itself sufficient to permit the conclusion that a great part of the stock in question was no longer raw sugar on 30 June 1968, considers it necessary to have recourse, if necessary, to an expert opinion both as to whether damage alleged in fact arose and to the question whether the damage could have been avoided wholly or in part by measures taken by the party concerned.

The *applicant* states that the speculations in which the Council may indulge on this point are irrelevant in settling the dispute, and states that the expert opinion requested by the defendant appears irrelevant, but it has no fears in this respect. As for the attitude which the German Government would have taken in the event of its having received the authorization in question the applicant refers to the evidence of the two ministers politically responsible at the time.

3. The damage alleged

The *applicant* maintains that the contested rules involve a minimum value of DM 2.62 per 100 kg.

The *defendant* on the other hand is of the opinion that this rule leads to a positive difference between the former and the new price of raw sugar of DM 2.69.

The differences between the parties relate mainly to the following points:

(a) The former German price level of white sugar on which the former price of raw sugar (DM 96.7 according to the applicant, DM 96.25 according to the defendant) is based;

(b) The amount of the packing costs to be deducted from the former price of white sugar in order to calculate the former net price of raw sugar (DM 0.67 according to the applicant, DM 1 according to the defendant).

As a result of this disagreement the two parties arrive at a *former net price of raw sugar* (for the amount from which 100 kg of white sugar may be obtained) which differs in the two cases (DM 83.06 according to the applicant, and DM 82.23 according to the defendant) and which moreover is in each case measured against a different reference value. Whereas the Council compares it with the new target price, the applicant compares it with the new intervention price.

Grounds of judgment

1 By application filed at the Registry on 13 February 1971 the undertaking Aktien-Zuckerfabrik Schöppenstedt asks the Court under the second paragraph of Article 215 of the EEC Treaty to order the Council to make good the damage which it caused the applicant by adopting Regulation No 769/68 of 18 June 1968 (OJ 1968, L 143) laying down the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968. Its principal claim is for the payment by the Council of 38 852.78 u.a., that is DM 155 411.13, representing the loss of income which it suffered in relation to the former German price of raw sugar. In the alternative it seeks moreover to be compensated otherwise for the damage which it has suffered.

Admissibility

2 The Council contests the admissibility of the application contending in the first place that it is aimed in fact not at compensation for damage due to its wrongful act or omission but to the removal of the legal effects arising from the contested measure. To recognize the admissibility of the application would frustrate the contentious system provided for by the Treaty in particular in the second paragraph of Article 173, under which individuals are not entitled to bring applications for annulment of regulations.

3 The action for damages provided for by Articles 178 and 215, paragraph 2, of the Treaty was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific nature. It differs from an application for annulment in that its end is not the abolition of a particular measure, but compensation for damage caused by an institution in the performance of its duties.

4 The Council further contends that the principal conclusions are inadmissible in that they involve the substitution of new rules, in accordance with the criteria described by the applicant, for the rules in question, a substitution which the Court has not the power to order.

5 The principal conclusions seek only an award of damages and, therefore, a benefit intended solely to produce effects in the case of the applicant. Therefore this submission must be dismissed.

6 The defendant then maintains that if the claim for damages is accepted the Court, in order to determine the amount of the damage in question, would have to fix criteria according to which the compensation with regard to prices would have had to be fixed and would thus encroach upon the discretion which the Council has in adopting legislative measures.

7 The determination of the criteria applicable to the calculation of the compensation in question relates not to admissibility but to the substance of the case.

8 The defendant pleads that the alternative claim is inadmissible since its subject-matter is unclear and since it is wholly lacking in a statement of the grounds relied on.

9 A claim for any unspecified form of damages is not sufficiently concrete and must therefore be regarded as inadmissible.

10 Only the principal claim is therefore admissible.

The substance of the case

11 In the present case the non-contractual liability of the Community presupposes at the very least the unlawful nature of the act alleged to be the cause of the damage. Where legislative action involving measures of economic policy is concerned, the Community does not incur noncontractual liability for damage suffered by individuals as a consequence of that action, by virtue of the provisions contained in Article 215, second paragraph, of the Treaty, unless a sufficiently flagrant violation of a superior rule of law for the protection of the individual has occurred. For that reason the Court, in the present case, must first consider whether such a violation has occurred.

12 Regulation No 769/68 was adopted pursuant to Article 37(1) of Regulation No 1009/67 which requires the Council to adopt provisions concerning the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968, and it authorizes the Member State in which the price of white sugar is higher than the target price to grant compensation for such quantities of white sugar and raw sugar which are in free circulation in its territory at 0.00 hours on 1 July 1968. The applicant points out that as regards Member States with a low price this regulation provides for the payment of dues on sugar stocks only if the previous prices were less than the intervention price valid from 1 July 1968 and concludes from this that by adopting different criteria for the right to compensation of sugar producers in a Member State with high prices, the regulation infringes the provision of the last subparagraph of Article 40(3) of the Treaty according to which any common price policy shall be based on common criteria and uniform methods of calculation.

13 The difference referred to does not constitute discrimination because it is the result of a new system of common organization of the market in sugar which

does not recognize a single fixed price but has a maximum and minimum price and lays down a framework of prices within which the level of actual prices depends on the development of the market. Thus it is not possible to challenge the justification of transitional rules which proceeded on the basis that where the previous prices were already within the framework set up they must be governed by market forces and which therefore required the payment of dues only in cases where the previous prices were still too low to come within the new framework of prices and authorized compensation only in cases where the previous prices were too high to come within the said framework.

14 In addition, having regard to the special features of the system established with effect from 1 July 1968, the Council by adopting Regulation No 769/68 satisfied the requirements of Article 37 of Regulation No 1009/67.

15 It is also necessary to dismiss the applicant's claim that Regulation No 769/68 infringed the provisions of Article 40 of the Treaty because the method of calculating the compensation and dues for the raw sugar stocks was derived from that adopted for white sugar, which could, according to the applicant, result in the unequal treatment of the producers of raw sugar. Although, relying on hypothetical cases, the applicant stated that the calculation methods selected did not necessarily lead to uniform results with regard to producers of raw sugar, it was not proved that this could have been the case on 1 July 1968.

16 The applicant's action founded upon the Council's liability does not therefore satisfy the first condition mentioned above and must be dismissed.

Costs

17 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. The applicant has failed in its submissions.

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 40, 173 and the second paragraph of 215;

Having regard to Regulation No 1009/67 of the Council of 18 December 1967, especially Article 37 (1);
Having regard to Regulation No 769/68 of the Council of 18 June 1968;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Dismisses the application as unfounded;**

2. **Orders the applicant to bear the costs.**

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 2 December 1971.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF THE ADVOCATE-GENERAL ROEMER DELIVERED ON 13 JULY 1971[1]

Mr President,
Members of the Court,

The case in which I am going to give my opinion today has its origin in the following facts.
Within the framework of the common agricultural policy a common organization of the market in sugar was created by Regulation No 1009/67 of the Council of 18 December 1967 (OJ No 308/1). This is characterized by a price system by means of which the agricultural population (more precisely sugar beet and sugar cane producers) should be guaranteed a fair income. As in other market organizations there is a price framework within which the prices for white sugar and raw sugar should be determined by the market. Target prices are provided for at the upper limit. Imports are brought up to their level by means of levies based on the threshold prices which are derived from the target prices having regard to the transport costs into the most distant consumer area (Article 12 of Regulation No 1009).

1 — Translated from the German.