JUDGMENT OF THE COURT (Sixth Chamber)
2 June 1994 *

In Case C-2/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Rechtbank van Eerste Aanleg, Brussels, for a preliminary ruling in the proceedings pending before that court between

Exportslachterijen van Oordegem BVBA

and

(1) Belgische Dienst voor Bedrijfsleven en Landbouw

(2) Generale Bank NV

on the interpretation of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970(I), p. 218) and Commission Regulation (EEC) No 2351/90 of 9 August 1990 adopting exceptional support measures for the market in pigmeat in Belgium and repealing Regulation (EEC) No 906/90 (OJ 1990 L 215, p. 9),

* Language of the case: Dutch.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris (Rapporteur), F. A. Schockweiler, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Exportslachterijen van Oordegem BVBA, by M. Denys, of the Brussels Bar,

— the Belgische Dienst voor Bedrijfsleven en Landbouw, by M. Fruy and B. De Moor, of the Brussels Bar,

— the Commission of the European Communities, by T. van Rijn, of the Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Exportslachterijen van Oordegem BVBA (represented by P. Flamey and P. Jongbloet, of the Brussels Bar), the Belgische Dienst voor Bedrijfsleven en Landbouw and the Commission at the hearing on 3 February 1994,

after hearing the Opinion of the Advocate General at the sitting on 10 March 1994,

gives the following

Judgment

1 By order of 16 December 1992, received at the Court on 4 January 1993, the President of the Rechtbank van Eerste Aanleg (Court of First Instance), Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970(I), p. 218, hereinafter referred to as 'Regulation No 729/70') and Commission Regulation (EEC) No 2351/90 of 9 August 1990 adopting exceptional support measures for the market in pigmeat in Belgium and repealing Regulation (EEC) No 906/90 (OJ 1990 L 215, p. 9, hereinafter referred to as 'Regulation No 2351/90').

2 The questions arose in proceedings between Exportslachterijen van Oordegem, a Belgian company, and both the Belgische Dienst voor Bedrijfsleven en Landbouw (Belgian Commercial and Agricultural Office, hereinafter referred to as 'BDBL'), the national intervention agency in matters concerning the application of the common agricultural policy, and Generale Bank concerning the lawfulness of a requirement to lodge a security introduced by Belgian legislation.

3 It appears from the file that early in 1990 there was an outbreak of classical swine fever in certain regions in Belgium with a high concentration of pig production. In order to deal with the situation measures were adopted by both the Belgian State and the Commission of the European Communities.

4 One of the measures adopted by the Belgian State to avoid the spread of the disease was to designate three zones reflecting the seriousness of the situation: a pro-

tection zone (I) around the centre of infection, around that a surveillance zone (II) and, around the latter, a buffer zone (III).

5 The Community provided for a number of different measures, depending on the zone concerned, in Regulation No 2351/90. In the first place, Articles 1 to 3 provided for the purchase of live pigs coming from the protection zone, which were to be destroyed. Next, Articles 4 to 8 concerned pigmeat from the buffer zone (III) which, after heat treatment, could be processed as usual and used for human consumption. Financial aid could be granted, after lodging a security, for the processing and private storage of meat which could not be processed quickly enough. Finally, Articles 9 and 10 provided for the purchase of pigmeat from the same buffer zone by the BDBL, at Community expense, up to the maximum amounts and at the prices fixed by the regulation in question. That meat was to be destroyed, that is to say, it was to be processed into products unfit for human consumption. It is those last measures which led to the dispute in the main proceedings.

6 The exceptional support measures ceased in October 1990.

7 Pursuant to Regulation No 2351/90 the BDBL adopted Notice No 55.200 laying down rules governing the contracts for the purchase of the meat in question by the BDBL for slaughterhouses and fixing the conditions applicable to such purchases.

8 Articles I and IX of the notice provided that, by submitting an application to purchase, the slaughterhouse undertook to fulfil, without reserve or restriction, all the obligations imposed by the notice. Article XII provided, finally, that the invoices concerning payment for the meat must be accompanied by proof of having lodged a security equal to 110% of the amount required (including VAT) and that that security would be released when the BDBL was in possession of proof that all the conditions laid down in the notice had been complied with.

9 In August 1990 the BDBL entered into contracts with Exportslachterijen van Oordegem BVBA, on application by the latter, for the purchase of certain quantities of pigmeat from the buffer zone (III). In accordance with Notice No 55.200 that undertaking lodged a security in favour of the BDBL at the Generale Bank.

10 Subsequent checks carried out in the refrigerated warehouses where the meat was kept showed that the latter did not correspond to the product sold by the undertaking to the BDBL under the contracts. Consequently, the BDBL claimed reimbursement of the price it had already paid to the undertaking, stating that if need be it would call in the security.

11 Exportslachterijen van Oordegem applied for an injunction to the President of the Rechtbank van Eerste Aanleg, Brussels, asking that the Generale Bank be prevented from paying the security to the BDBL. In support of its application, the undertaking argued that the lodging of the security was unlawful because it was not provided for by the relevant Community legislation.

12 In the light of that argument the Rechtbank stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'Is the Belgian State, through the intermediary of the BDBL, in breach of Commission Regulation No 2351/90 of 9 August 1990 when in Article XII of Notice No 55.200 it imposes the prior requirement that a security be lodged for payments chargeable to the European Community of the buying-in prices of pigmeat contaminated with swine fever?

1. Is it compatible with Community law for the Belgian intervention agency, in application of *inter alia* Article 8 of Regulation (EEC) No 729/70 of the Council of 21 April 1970, and in connection with measures adopted in order to

combat swine fever, in particular the buying-in by the intervention agency of pigmeat in accordance with Commission Regulation (EEC) No 2351/90 of 9 August 1990, to impose the prior requirement that a security be lodged for payments chargeable to the European Community of the buying-in prices of pigmeat coming from the buffer zone?

2. (a) Is it compatible with the requirement of firm measures to combat swine fever and the need for strict application of the measures adopted by the Commission for the full amount of the security to be called in and to be definitively retained by the holder regardless of the extent of either the failure to comply or the irregularity, or both?

2. (b) If the Court of Justice rules that the security may not be wholly forfeit may the Belgian intervention agency, the BDBL, extrapolate from the results of samples taken in the course of checks of goods sold an overall percentage which does not meet the requirements, and on that basis require the amounts paid to be returned and consequently the security to be called in?'

First question

13 The first question asks in essence whether in the context of the measures adopted to combat swine fever, in particular the purchase of pigmeat by intervention agencies in accordance with Regulation No 2351/90, Article 8 of Regulation No 729/70 empowered a Member State to make payment on behalf of the Community of the purchase price for the pigmeat from the buffer zone subject to provision of a security.

14 In acts specifically adopting measures regarding the implementation of the common agricultural policy and the use of finance from the European Agricultural Guidance and Guarantee Fund ('the Fund'), the Community legislature does not generally include provisions regulating the procedure for supervision in detail, leaving to the Member States the power to lay down the detailed rules for supervision under their own legal system and on their own responsibility, choosing the most appropriate solution. That distribution of powers, the Court has held, is consistent with the general approach on which the common organization of the agricultural markets is based (Joined Cases 146/81, 192/81 and 193/81 *BayWa AG and Others* v *BALM* [1982] ECR 1503, paragraphs 20 and 21).

15 In this case, Commission Regulation No 2351/90, which had established exceptional measures in order to deal with an emergency, did not introduce a complete set of rules regarding the measures of support for the pigmeat market in the Member State in question, and in particular did not include provisions to ensure compliance with the obligations it imposed on traders who took advantage of the opportunity to purchase meat from the buffer zone with the aid of Community funds.

16 As regards the use of Community funds resulting, as in this case, from the implementation of the common agricultural policy, Article 8(1) of Regulation No 729/70, which is the basic regulation governing the obligations of the Community and the Member States in connection with the financing of the common agricultural policy, provides as follows:

'The Member States in accordance with national provisions laid down by law, regulation or administrative action shall take the measures necessary to:

— satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;

— prevent and deal with irregularities;

— recover sums lost as a result of irregularities or negligence.

...'

17 That provision, which expressly lays down in that specific area the obligations imposed on Member States by Article 5 of the Treaty defines, the Court has said, the principles according to which the Community and the Member States must ensure the implementation of Community decisions on agricultural intervention financed by the Fund and combat fraud and irregularities in relation to those operations (*BayWa*, cited above, paragraph 13).

18 That article thus imposes on the Member States the general obligation to take the measures necessary to satisfy themselves that the transactions financed by the Fund are actually carried out and are executed correctly, even if the specific Community act does not expressly provide for the adoption of particular supervisory measures (Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraphs 16 and 17).

19 It should also be emphasized that in the case of supervisory measures adopted at the national level in order to implement Community rules regarding the common agricultural policy the national authorities must act with the same degree of care as they exercise in implementing the corresponding national legislation, in order to prevent any erosion of the effectiveness of Community law (*BayWa*, cited above, paragraph 22).

20 The national measures must, moreover, satisfy the general principle of proportionality, that is to say, they must not exceed what is necessary and appropriate in order to achieve the desired aim (Case 77/81 *Zuckerfabrik Franken* v *Germany* [1982] ECR 681).

21 The question to be answered is therefore whether the measures which are adopted at the national level may include the introduction of the compulsory lodging of a security, as was done in this instance.

22 The lodging of a security is a method frequently used by the Community measures implementing the common agricultural policy (for instance, Commission Regulation (EEC) No 1974/80 of 22 July 1980 laying down general implementing rules in respect of certain food-aid operations involving cereals and rice (OJ 1980 L 192, p. 11), Commission Regulation (EEC) No 434/82 of 25 February 1982 on a standing invitation to tender for the mobilization of Community white sugar for the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) as food aid (OJ 1982 L 55, p. 34) and Commission Regulation (EEC) No 2373/83 of 22 August 1983 laying down, for the 1983/84 wine-growing year, detailed implementing rules concerning the distillation provided for in Article 11 of Regulation (EEC) No 337/79 (OJ 1983 L 232, p. 5). Consequently, the Member States may also introduce such a measure.

23 It must also be noted that the security scheme in question was an advantage, as the BDBL rightly observed, for traders making use of Community support measures, inasmuch as it enabled them to be paid immediately without having to await the results of subsequent checks.

24 The reply to the first question must therefore be that in the context of the measures adopted to combat swine fever pursuant to Commission Regulation No 2351/90 Member States were empowered, by virtue of Article 8 of Regulation No 729/70, to make payment on behalf of the Community of the purchase price of the pigmeat from the buffer zone subject to the lodging of a security.

Second question

25 In the first part of the second question the national court asks in essence whether it was permissible for Member States to provide that where the trader failed to comply with his obligations under Regulation No 2351/90 the whole amount of the security could be called in, regardless of the seriousness of the irregularities.

26 The Community measures implementing the common agricultural policy usually provide for the loss of the whole of the security required where the beneficiary of a Community measure has failed to comply with an obligation which may be regarded as an important and principal one, that is to say an obligation which is essential in order for the measure in question to achieve its aim.

27 The Court has held that in such cases the loss of the security in its entirety or, more generally, exclusion from the benefit of a favourable Community measure, satisfies the principle of proportionality described above (Case 272/81 *RU-MI* v *FORMA* [1982] ECR 4167). Consequently, the forfeiture of the whole security provided for by national legislation adopted in order to implement Community measures must likewise be regarded as justified in similar cases.

28 In view of the circumstances of the main case, in particular the results of the checks carried out necessarily by sampling, the obligation to be regarded as the principal one in this case, as the Commission rightly observes, is the obligation of the trader to deliver to the BDBL products coming exclusively from the area of Belgian territory affected by swine fever. That obligation is inherent in the very

nature and the purpose of the Community measure in question. The trader's obligation to deliver to the BDBL products coming exclusively from the categories listed in the relevant provisions of Regulation No 2351/90 must likewise be regarded as a principal obligation. The Community provisions creating rights to benefits financed by Community funds must be interpreted strictly (*BayWa*, cited above, paragraph 10).

29 The answer to the first part of the second question must therefore be that Community law permitted Member States to provide, in the context of the application of Regulation No 2351/90, that the whole of the security would be forfeit if the beneficiary of the Community measures in question failed to comply with a principal obligation.

30 In view of the reply to the first part of that question it is not necessary to reply to the second part.

Costs

31 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the President of the Rechtbank van Eerste Aanleg, Brussels, by order of 16 December 1992, hereby rules:

1. **In the context of the measures adopted to combat swine fever pursuant to Commission Regulation No 2351/90 of 9 August 1990 adopting exceptional support measures for the market in pigmeat in Belgium and repealing Regulation (EEC) No 906/90, Member States were empowered, by virtue of Article 8 of Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy, to make payment on behalf of the Community of the purchase price of the pigmeat from the buffer zone subject to the lodging of a security.**

2. **Community law permitted Member States to provide, in the context of the application of Regulation No 2351/90, cited above, that the whole of the security would be forfeit if the beneficiary of the Community measures in question failed to comply with a principal obligation.**

Mancini Kakouris Schockweiler

Kapteyn Murray

Delivered in open court in Luxembourg on 2 June 1994.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber