JUDGMENT OF THE COURT
14 January 1987 *

In Case 278/84

Federal Republic of Germany, represented by M. Seidel, Ministerialrat, acting as Agent, and D. Ehle, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the German Embassy,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, P. Karpenstein, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department,

defendant,

APPLICATION for a declaration that Articles 1, 2 and 3 of Commission Regulation No 2677/84 of 27 September 1984 on transitional measures in readiness for the revaluation of the representative rate for the German mark on 1 January 1985 (Official Journal 1984, L 253, p. 31) are void,

THE COURT

composed of: Lord Mackenzie Stuart, President, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, K. Bahlmann and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

having regard to the Report for the Hearing, as amended following the hearing on 2 July 1986 at which the applicant was represented by D. Ehle and the Commission of the European Communities by P. Karpenstein,

* Language of the Case: German.

upon hearing the Opinion of the Advocate General delivered at the sitting on 16 December 1986,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 November 1984, the Federal Republic of Germany brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Articles 1, 2 and 3 of Commission Regulation No 2677/84 of 20 September 1984 on transitional measures in readiness for the revaluation of the representative rate for the German mark on 1 January 1985 (Official Journal 1984, L 253, p. 31) are void.

2 In order to overcome the difficulties caused by monetary compensatory amounts and as part of the efforts to reintegrate the agricultural sector into the general economy, the Council adopted Regulation No 855/84 of 31 March 1984 on the calculation and the dismantlement of the monetary compensatory amounts applying to certain agricultural products (Official Journal 1984, L 90, p. 1) which revalued the representative rates of the German mark and Dutch guilder from 1 January 1985 bringing them closer to the central rates, and made some changes to the method of calculating monetary compensatory amounts.

3 In the Federal Republic of Germany the new conversion rates led to a reduction in support prices for agricultural products expressed in national currency and consequently to a reduction in agricultural income. To alleviate the situation the German Government was authorized under Article 3 of Regulation No 855/84 to grant German farmers a special aid partially financed on a degressive basis by the Community. Following a request by the German Government the Council, by Decision 84/361 of 30 June 1984 concerning an aid granted to farmers in the Federal Republic of Germany (Official Journal 1984, L 185, p. 41), fixed the maximum amount of aid at 5% of the price exclusive of value-added tax paid by the purchaser of the agricultural product for a period starting on 1 July 1984, that is to say six months before the revaluation of the representative rate of the German mark was to take effect on 1 January 1985.

4 Article 7 of Regulation No 855/84 provides that transitional measures necessary for:

'. . . avoiding disturbances following the revaluation of the representative rates of the German mark and the Dutch guilder as at 1 January 1985',

may be adopted according to the procedure provided for in Article 6 of Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture (Official Journal, English Special Edition 1971 (I), p. 257). That provision in turn refers to the detailed rules subsequently defined in Article 26 of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1).

5 After the matter had been considered on 20 September 1984 by the Agri-monetary Management Committees (Cereals and Sugar Sectors), the Commission on the same day adopted the contested Regulation No 2677/84 which entered into force on 21 September 1984. Articles 1, 2 and 3 thereof contain certain specific transitional provisions for the cereals, sugar and potato starch sectors in the Federal Republic of Germany. Thus the application of the new revalued representative rate for intervention purchases was brought forward to 14 September 1984 for cereals subject up to a maximum of 2.5 million tonnes and 21 September 1984 for sugar (Articles 1 and 2). As regards the minimum prices of sugarbeet which sugar manufacturers have to pay and the minimum price payable by starch manufacturers to potato producers for the entire 1984/85 marketing year, Article 3 laid down special conversion rates lying between the old and new rates and weighted on the basis of the periods during which the manufacturers bought the raw material and marketed their final products.

6 Reference is made to the Report for the Hearing for a full account of the Community provisions at issue, the arguments of the parties and the facts adduced by them which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 In support of its claim the German Government makes the following submissions.

(i) Infringement of essential procedural requirements;

(ii) The Commission's lack of power to adopt the provisions at issue and breach of the principle of Community financing of monetary compensatory amounts;

(iii) Infringement of Council Regulation No 855/84 by reason of the alteration of the period laid down therein for the new representative rates for the German mark;

(iv) Breach of the principle of non-discrimination;

(v) Breach of the rule against the adoption of contradictory provisions, and

(vi) Breach of the principle of the protection of legitimate expectation.

Infringement of essential procedural requirements

8 The documents in the case show that, after publishing on 14 September 1984 a notice in Official Journal L 244, p. 45 drawing the attention of interested parties to its intention to adopt in the cereals sector 'measures under Article 7 of Regulation (EEC) No 855/84, in order to avoid abnormally high intervention purchases due to the modification of the representative rate for the Deutschmark . . . on 1 January 1985', the Commission sent a telex message on 18 September 1984 convening the representatives of the Member States to a joint meeting of the Agri-monetary Management Committees on 20 September 1984. According to the notice convening the meeting the committees were to be asked to give their opinion on a proposal for a Commission regulation 'on transitional measures in view of the revaluation of the representative rate of the DM . . . on 1 January 1985.'

9 At the meeting of the Management Committees on 20 September 1984 the draft Commission Regulation at issue was distributed as a meeting document. According to the summary record of the meeting the draft gave rise to an 'extensive exchange of views', the meeting was adjourned 'in order to allow the delegations to contact their respective capitals', a modified draft, taking account of certain points raised in the discussions, was put at the disposal of the delegations when the meeting was resumed and the result of the vote was such that no opinion could be delivered.

10 The German Government submits that the adoption of the regulation at issue infringed essential procedural requirements by disregarding the procedure laid down in Article 6 of Regulation No 974/71 and Article 26 of Regulation No 2727/75. In order to speed up the procedure at the meeting of the Management Committees, the Commission claimed that there was a case of 'extreme urgency', even though it could have made provision for the necessary measures in good time. Moreover, the members of the Management Committees and in particular the German members did not have sufficient opportunity to give proper consideration to the draft regulation submitted to them. There had not even been two clear working days to prepare the meeting of the committees whereas for such important and difficult questions at least a week should have been allowed for preparation.

11 The Commission contends that when the regulation at issue was adopted the situation was one of 'extreme urgency' within the meaning of Article 3 of the internal regulations of the Management Committees for the agricultural sector. At the time exceptionally high intervention sales were to be expected in the cereals and sugar sectors. In September 1984 the Community was confronted with an extremely difficult budgetary situation. The Commission accordingly had to do everything possible to avoid exposing the European Agricultural Guidance and Guarantee Fund to additional financial losses. Furthermore, the problems which the Management Committees had to consider were not new to the German Government, which had been discussing them with the Commission since the adoption of Regulation No 855/84.

12 It should be noted that Article 26 (2) of Regulation No 2727/75 provides that the Management Committee should deliver its opinion on draft measures submitted by the Commission within a time-limit set by the chairman 'according to the urgency of the matter'. Article 3 of the internal regulations of the Management Committees for the agricultural sector adopted at the joint meeting of the Management Committees on 22 July 1965 provides that the convening of the meeting, the agenda and the draft measures in question must normally reach the permanent representations of the Member States no later than eight days before the date of the meeting. In emergencies, however, at the request of a representative of a Member State or on his own initiative, the chairman may reduce the period to two clear days that are not public holidays before the date of the meeting and in cases of the greatest urgency include a matter on the agenda of a meeting in the course of that meeting. Article 4 provides that where a draft is submitted during the

course of a meeting the chairman, at the request of the representative of a Member State, must postpone the vote to the end of the meeting or, in the event of particular difficulties, extend the meeting to the following day.

13 It is clear from those provisions that whether a case is of extreme urgency is for the chairman of the particular Management Committee to decide. In view of the nature of the assessment which normally has to be made within a very short period the Court can revoke a decision adopted by the chairman only in cases of obvious error or misuse of powers. There is no evidence in the documents to lead to the conclusion that there was any such defect in the present case.

14 According to the Commission's information, which was not challenged by the German Government, 43 000 tonnes of sugar had been sold into intervention between 17 and 20 September 1984 whereas there had been no sales of that magnitude for some years in that sector. The Commission's fear that fresh and much larger quantities would be offered in the following days was therefore reasonable. It is common ground that the Commission's notice published on 14 September 1984 had considerably aggravated the existing uncertainty in the cereals market and that in consequence many traders and cooperatives had attempted to offer cereals to the German intervention agency, which had provisionally rejected them pending the definitive adoption of measures by the Commission. Finally, in a letter of 29 August 1984 the German Government had itself stressed that the markets were so disturbed that the traders and processors were more and more inclined to cover themselves by recourse to intervention and that only speedy action by the Commission could stem the damage which was threatening the markets and finances of the Community. In those circumstances the chairman of the Management Committee did not exceed the limits of his discretion in reaching the conclusion that there was at the time a case of extreme urgency.

15 With regard to the German Government's claim that in any event the German members of the Management Committees were not able to give due consideration to the measures proposed by the Commission, it must be observed that from May 1984 the German Government had approached the Commission several times to urge it to make immediate use of its power under Article 7 of Regulation No 855/84 to determine compensation payable by the Community for the reduction in

prices. The exchange of views continued up to the moment of the meeting of the Management Committees and the German Government was thus acquainted with the Commission's general position on the application of the said article. Further, by publishing the notice of 14 September 1984 the Commission had directly drawn the attention of all those interested, including the Member States, to its intention of acting pursuant to Article 7 of Regulation No 855/84 to adopt transitional measures on intervention purchases which could apply from the date the notice was published. Finally, at the meeting of the Management Committees on 20 September 1984 the German delegation had every opportunity of contacting the German Government to obtain further instructions and, if necessary, of asking for the meeting to be extended to the following day. In those circumstances it does not appear that the time-limit set prevented the German Government and its representatives in the Management Committees from giving appropriate consideration to the measures contemplated in the Commission's draft regulation.

16 It follows that the German Government's first submission must be rejected.

The Commission's power to adopt Regulation No 2677/84

17 The German Government submits that under Article 7 of Regulation No 855/84 the Commission was obliged to fix compensation for the fall in prices for marketing and processing undertakings in the Federal Republic of Germany. It refers in particular to the origins of Article 7 which was inserted in the draft regulation submitted by the Commission to the Council only during discussions between the German Government and the Commission after the German delegation had drawn attention to the problems caused to traders and processors by the fall in prices. The German Government submits that Article 7 must be interpreted in the light of the general principle that the Community should be responsible for all costs connected with losses due to the fall in prices by reason of a change in compensatory amounts. Consequently, in adopting Regulation No 2677/84 the Commission did not correctly use the power given to it by Article 7 of Regulation No 855/84.

18 In that respect it should be noted that it is not possible to interpret a provision of a Community regulation of general scope on the basis of negotiations between a Member State and one of the Community institutions. Article 7 of Regulation No

855/84 gives the Commission, in general terms, power to adopt transitional measures needed to avoid in particular disturbances on the markets in question following the revaluation of the particular representative rates from 1 January 1985. Neither the wording of Article 7 nor the recitals in the preamble to the regulation, which do not refer to that article, justify the German Government's interpretation or require the Commission to maintain the level of income of traders and processors of agricultural products in the Federal Republic of Germany.

19 Furthermore, no other provision of Community law provides for any compensation of traders and processors. It is true that Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) provides that the Guarantee Section of the European Agricultural Guidance and Guarantee Fund is to finance refunds on exports to third countries and intervention intended to stabilize the agricultural markets. It is also true that Regulation No 2746/72 of the Council of 19 December 1972 amending Regulation No 974/71 (Official Journal, English Special Edition 1972 (28-30 December), p. 64) expressly extended that obligation to the financing of monetary compensatory amounts by including monetary compensatory amounts as part of the aforesaid refund or intervention measures. Nevertheless, according to established case-law the provisions of Community law on entitlement to benefits financed by Community funds must be interpreted strictly (see Joined Cases 146, 192 and 193/81 *Baywa* v *BALM* [1982] ECR 1503). In those circumstances it is not possible to extend, by way of analogy, the provisions of Regulations Nos 729/70 and 2746/72 to cover losses suffered at the marketing and processing stages following a fall in prices due to the revaluation of the representative rate of the German mark.

20 The German Government has thus failed to show that the Commission was bound under Article 7 of Regulation No 855/84 to adopt measures for the benefit of traders and processors to introduce a system of compensation for the fall in prices in the Federal Republic of Germany due to the revaluation provided for by Regulation No 855/84; still less has it shown that Article 7 excluded any other transitional measure.

21 The German Government's second submission must therefore be dismissed.

The alleged amendment of Regulation No 855/84 by Regulation No 2677/84

22 The German Government submits that Commission Regulation No 2677/84 unlawfully amended Council Regulation No 855/84. Council Regulation No 855/84 provided that the amended representative rates for cereals, sugar and potato starch were not to enter into force in the Federal Republic of Germany until 1 January 1985. But Articles 1, 2 and 3 of Regulation No 2677/84 to some extent brought forward by three months the application of the amendment of the representative rates although the Commission may not amend the provisions of a Council Regulation by adopting implementing measures unless expressly authorized by the Council, and Article 7 of Regulation No 855/84 contains no such authorization.

23 That argument cannot be accepted. Although as a general rule a clause authorizing the Commission to adopt transitional measures is to be interpreted as meaning that the transitional measures must relate to the period after the main provisions of the rules at issue take effect, the possibility cannot be excluded that the transitional rules may apply to the period between the publication of the rules and their taking effect, provided, however, that they retain their transitional nature and are necessary to achieve the objectives of the power at issue.

24 Article 7 of Regulation No 855/84 expressly authorized the Commission to adopt the transitional measures needed to avoid disturbances on the markets in question following the revaluation of the representative rate of the German mark. There is no doubt that the provisions of Regulation No 2677/84 were intended to avoid during the transitional period disturbances and speculative sales with regard to the products covered by Regulation No 855/84. In order to avoid such disturbances it may be essential to intervene at a preliminary stage as has been shown in the present case by the large quantity of products offered to intervention. There is nothing in the documents to show that in adopting those provisions the Commission went beyond what was appropriate and necessary to achieve the aim of Article 7.

25 It thus appears that the measures adopted by the Commission in Articles 1, 2 and 3 of Regulation No 2677/84 were within the limits of the powers conferred on it by Article 7 of Regulation No 855/84 and that the third submission of the German Government is unfounded.

Alleged infringement of the principle of non-discrimination

26 In the first place the German Government submits that Article 1 of Regulation No 2677/84 infringes the principle of non-discrimination in so far as it disregards the fact that regional differences, especially those due to climate, in the Federal Republic of Germany favoured traders who, because of an early cereal harvest, were able to offer their products to the intervention agency before the regulation entered into force.

27 In that respect it suffices to observe that Article 1 (3) of Regulation No 2677/84 expressly authorized the German authorities to adopt the procedures required for the implementation of that article in the Federal Republic of Germany and consequently the German Government was itself empowered to avoid the discrimination of which it complains, in particular by means of a fair distribution of the 2 500 000 tonnes for which the old conversion rate remained applicable.

28 In the second place the German Government submits that Article 3 (2) of Regulation No 2677/84 constitutes unlawful discrimination against manufacturers of potato starch in relation to manufacturers of other starches, especially maize or cereal starch. It claims that following the alteration in the representative conversion rate and the dismantling of monetary compensatory amounts, the previous balance between the prices of those products which were in competition with each other was disturbed and the transitional provision of Article 3 (2) of Regulation No 2677/84 was not sufficient to remedy the disturbance.

29 The Commission contends that no such discrimination has been shown to exist. Following the entry into force of Article 3 (2) of Regulation No 2677/84, the two groups of starch manufacturers were, during the second half of 1984, in roughly the same position as regards the supply of the basic product. In so far as manufacturers of cereal starch had used German cereals, they were able, after Council Decision 84/361/EEC, which authorized State aid *inter alia* to cereal farmers, to

obtain supplies from 1 July 1984 onwards at prices close to those obtaining on 1 January 1985. For manufacturers of potato starch, Regulation No 2677/84 reduced the price of potatoes for the whole of the marketing year.

30 The second part of the applicant's submission challenges Commission Regulation No 2677/84 only to the extent that the regulation is not sufficient to remedy existing discrimination caused by provisions of Council Regulation No 855/84. Thus, as the German Government itself states, it is not in fact the contested Commission regulation which caused the alleged infringement of the principle of non-discrimination contained in the second subparagraph of Article 40 (3) of the Treaty. Moreover, the German Government has by no means shown that there was discrimination distorting competition between the various kinds of potato and cereal starches.

31 Consequently, both parts of the submission of infringement of the principle of non-discrimination are unfounded.

Contradictory provisions

32 The German Government considers that Article 3 (1) of Regulation No 2677/84 is self-contradictory and therefore contrary to Article 190 of the Treaty. Under Article 3 (1) the minimum price of sugarbeet was fixed on the basis of an average obtained by weighting, on the one hand, the old representative rate for a period of three months during which, with the exception of buying-in operations, the mechanisms of the common organization of the market remained unchanged, and on the other, the new representative rate for a period of nine months. Because of the provisions of Article 2 of Regulation No 2677/84 reducing the representative rate applicable to the calculation of the purchase price of sugar offered to the intervention agency, the original market price determined by that purchase price was no longer obtainable on the market.

33 It is clear however from the tables supplied in answer to questions put by the Court that from September to December 1984 the market price of sugar in the Federal Republic of Germany remained higher than the old intervention price so that those prices were not absolutely interdependent. Consequently, the German

Government has not shown that the calculation on which the provision of Article 3 (1) of Regulation No 2677/84 is based was unrealistic and thus that the regulation was self-contradictory. That submission must therefore also be dismissed.

Alleged infringement of the principle of the protection of legitimate expectation

34 Finally, the German Government claims that the provisions of Article 3 (1) and (2) of Regulation No 2677/84, which reduce the minimum prices for sugarbeet and potatoes, infringe the principle of the protection of legitimate expectation in that they have a retroactive effect upon contracts (in some cases already performed) between sugarbeet and potato farmers on the one hand, and the processing industry on the other. In that respect the German Government points out that farmers had planned their marketing year in the spring of 1984 on the basis of decisions on prices adopted by the Council, which fixes minimum prices a year in advance.

35 The preliminary observation should be made that the problem thus raised by the German Government is not one of retroactivity in the strict sense but results from the fact that any alteration in representative rates necessarily affects the relations between parties to long-term contracts. That is the position in sectors such as those of sugar and potato starch, for example, where Community rules assume that contracts between farmers and manufacturers have been concluded for the whole of the marketing year and the alteration takes effect during or before the marketing year but at a time when the contracts have already been concluded.

36 As the Court has already held in its judgment of 16 May 1979 (Case 84/78 *Tomadini* v *Amministrazione delle Finanze dello Stato* [1979] ECR 1801), the field of application of the principle of legitimate expectation cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules, especially in a field such as the common organization of the markets, the purpose of which necessarily involves constant adjustment to the variations of the economic situations in the various agricultural sectors. That observation also applies to alterations of the representative rates.

37 It follows that the German Government's final submission is also unfounded and that the application must be dismissed in its entirety.

Costs

38 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Federal Republic of Germany has failed in its submissions it must be ordered to bear the costs, including those of the interlocutory proceedings.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the Federal Republic of Germany to pay the costs, including those of the interlocutory proceedings

Mackenzie Stuart Kakouris O'Higgins Shockweiler

Bosco Koopmans Due Bahlmann Joliet

Delivered in open court in Luxembourg on 14 January 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President