JUDGMENT OF THE COURT (Fourth Chamber)
18 October 1988 *

In Case 121/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court) Frankfurt am Main for a preliminary ruling in the proceedings pending before that court between

Bayernwald Früchteverwertung GmbH

and

Federal Republic of Germany

on the interpretation and validity of Article 4 (2) of Commission Regulation No 1530/78 of 30 June 1978 laying down rules for the application of the system of aid in respect of certain products processed from fruit and vegetables (Official Journal 1978, L 179, p. 21),

THE COURT (Fourth Chamber)

composed of: T. Koopmans, President of Chamber, C. N. Kakouris and G. C. Rodríguez Iglesias, Judges,

Advocate General: Sir Gordon Slynn
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of:

Bayernwald Früchteverwertung GmbH, the plaintiff in the main proceedings, by V. Schiller, of the Cologne Bar, in the written procedure and at the hearing;

* Language of the Case: German.

the Government of the Federal Republic of Germany, the defendant in the main proceedings, by Mr Apelt, acting as Agent, in the written procedure, and by Mr Bergemann, acting as Agent, at the hearing,

the Commission of the European Communities, by Dierk Booss, acting as Agent, in the written procedure and at the hearing,

having regard for the Report for the Hearing and further to the hearing on 6 July 1988,

after hearing the Opinion of the Advocate General delivered at the sitting of the same date,

gives the following

Judgment

1 By an order of 19 March 1987, which was received at the Court on 7 April 1987, the Verwaltungsgericht Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation and validity of Article 4 (2) of Commission Regulation No 1530/78 of 30 June 1978 laying down rules for the application of the system of aid in respect of certain products processed from fruit and vegetables (Official Journal 1978, L 179, p. 21).

2 That question arose in a dispute concerning the conditions for the grant of the abovementioned aid between Bayernwald Früchteverwertung GmbH (hereinafter referred to as 'Bayernwald'), the plaintiff in the main proceedings, and the Bundesamt für Ernahrung und Forstwirtschaft (Federal Office for Food and Forestry), the body designated by the Federal Republic of Germany, the defendant in the main proceedings, for the purposes of the application of the system of aid in question.

The relevant legal provisions

3 Under Article 3a (1) of Council Regulation (EEC) No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1977, L 73, p. 1), as amended by Council Regulation (EEC) No 1152/78 of 30 May 1978 (Official Journal 1978, L 144, p. 1), a system of production aid was introduced for the products specified in Annex Ia to the regulation, obtained from fruit and vegetables harvested in the Community. Council Regulation (EEC) No 1639/79 of 24 July 1979 amending Regulation (EEC) No 516/77 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1979, L 192, p. 3) extended the aid system with effect from the 1980/81 marketing year to cherries preserved in syrup coming under subheading 20.06 B of the Common Customs Tariff.

4 Article 3b (1) of Regulation No 516/77 sets out the purpose of the system of aid: the amount of aid is fixed so as to make up the difference between the prices of Community products and those of products from non-member countries.

5 The aid scheme in question is based, pursuant to Article 3a (2) and (3) of Regulation No 516/77 on a system of contracts, which are concluded for a period to be determined, and which are binding on the producers of the fresh produce and on the processing undertakings. For deliveries made under such contracts, a minimum price is fixed at Community level which processors must pay to the producers.

6 Article 3b (4) provides as follows: 'Production aid shall be granted to processors who have concluded contracts in accordance with Article 3a'.

7 Article 3b (5) lays down three conditions for the grant of aid in the following terms:

'The aid shall be paid, on application, to the interested parties as soon as the body designated by the Member State in which the processing is carried out has established that:

(i) the processor has paid the producer a price not less than the minimum price;

(ii) the products under contract have been processed;

(iii) the products after processing comply with the quality standards in force.'

8 Article 3c provides that detailed rules for the application of Articles 3a and 3b are to be adopted in accordance with the procedure laid down in Article 20 of the same regulation, that is to say by the Commission in accordance with the management committee procedure.

9 On the basis of that enabling provision, the Commission adopted Regulation No 1530/78, cited above. Under Article 4 (1) of that regulation the checks provided for in Regulation No 516/77 must include, in particular, verification that the quantities of raw materials delivered under the contracts have been processed and verification that the products resulting from such processing comply with the applicable quality standards.

10 Article 4 (2) provides as follows:

'...

The processing undertakings concerned shall keep stock accounts showing:

(a) for each of the periods referred to in Article 1 (2):

(i) the consignments of raw materials bought and entering the undertaking each day, the consignments covered by processing contracts or endorsements and the numbers of any receipts which may be drawn up in respect of these consignments being shown separately,

(ii) the weight of each consignment entering the undertaking and, in the case of consignments covered by the said contracts, the name and address of the other contracting party;

(b) the quantities of finished products obtained each day by processing the raw materials, the quantities obtained from the raw materials delivered under the processing contracts being shown separately.

. . . '.

The main proceedings

11 On the basis of the above provisions, Bayernwald made an application on 8 August 1980 seeking, for the 1980/81 marketing year, the grant of the production aid for the processing of 55 tonnes of sweet cherries in 1980. The sweet cherries in question were delivered under six contracts.

12 The Bundesamt für Ernährung und Forstwirtschaft refused to grant the aid by a decision of 28 April 1982 on the grounds that an audit carried out at the undertaking had revealed inconsistencies between delivery documents, invoices and calculations, and that regular stock accounts had not been kept. In particular, the daily entries required under the abovementioned provisions were missing, and the calculations submitted in evidence in their place could not be broken down on a day-by-day basis.

13 Bayernwald brought an action against that decision before the Verwaltungsgericht Frankfurt am Main. That court stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is Article 4 (2) of Commission Regulation (EEC) No 1530/78 of 30 June 1978 (Official Journal 1978, L 179, p. 21) a rule imposing an additional condition for the grant of production aid which the Commission of the European Communities was empowered to enact without exceeding its legislative powers, or is the abovementioned provision merely a rule prescribing that only the stock accounts are admissible as evidence?'

14 The Verwaltungsgericht Frankfurt am Main analysed the question as follows:

The first question which arises is whether the obligation to keep stock accounts, imposed on the undertakings by the provision in question, constitutes a supplementary condition for entitlement to the grant of aid in addition to the three conditions laid down in Article 3b (5) of Regulation No 516/77.

If so, the question arises whether the Commission has exceeded its powers since, under the aforementioned provision, it is empowered to adopt only the detailed rules for the application of Articles 3a and 3b of Regulation No 516/77, cited above.

If not, the question arises as to the consequences and penalties attached to failure to keep stock accounts; the Commission regulation contains no express provision on those matters; is the keeping of stock accounts to be regarded as the sole form of evidence or as one form of evidence which may be supplemented by other evidence?

15 In its question referred to the Court, as elucidated by the above analysis, the national court is essentially asking:

(a) Is Article 4 (2) of Regulation No 1520/78 to be interpreted as requiring the processing undertakings in question to keep stock accounts as a necessary condition for entitlement to the grant of aid, or else as requiring stock accounts to be kept only as a non-exclusive means of evidence, which may thus be replaced by other means, for establishing that the three substantive conditions for the grant of aid imposed by Article 3b (5) of Regulation No 516/77 have been fulfilled?

(b) Is Article 4 (2) invalid on the grounds that, in adopting that provision, the Commission exceeded the powers conferred on it by Article 3c of Regulation No 516/77?

16 It is appropriate in replying to the national court to answer in turn the two questions formulated above.

17 Reference is made to the Report for the Hearing for a fuller account of the facts, the relevant provisions, the course of the procedure and of the observations submitted to the Court, which are referred to or mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

Question (a)

18 It should be noted that the purpose of Article 4 (2) of Regulation No 1530/78 is, according to the preamble to the regulation, to ensure the smooth operation of the system of aid in all the Member States and to set up a uniform system of supervision to achieve that purpose. That supervision should enable the competent national authorities to check that the substantive conditions for the grant of aid, as laid down in the basic regulation, have been met. That check is justification for the requirement to keep stock accounts in order to qualify for the aid.

19 It should also be noted that the records which are kept in order to comply with the requirement to keep stock accounts must include, as an indispensable minimum, all the information listed in Article 4 (2), and be accompanied by supporting documents. If the indispensable minimum information is not present, the requirement to keep a stock account cannot be regarded as having been met. However, if any doubt exists as to the accuracy of certain entries in the stock account, Article 4 (2) does not preclude the use of other additional documents in order to remove those doubts.

20 Therefore the answer to the question must be that Article 4 (2) of Commission Regulation No 1530/78 must be interpreted as meaning that the keeping of a stock account, containing all the information mentioned in the provision, constitutes a condition for the grant of the production aid provided for in Council Regulation No 516/77, and that any doubts as to the accuracy of certain entries in that stock account may be resolved by reference to other additional documents.

Question (b)

21 It should be stated that the keeping of a stock account as required by Article 4 (2) of Regulation No 1530/78 is part of the system of supervision and proof which had to be set up to ensure the smooth operation of the system of aid. That requirement is part of the detailed rules for the application of Articles 3a and 3b of Regulation No 516/77 which the Commission was empowered to adopt under Article 3c of the same regulation.

22 As there is nothing in the documents before the Court to show that in setting up this system of supervision the Commission went beyond what is necessary to ensure the smooth operation of the system of aid, it should be stated that the Commission did not exceed the powers conferred on it.

23 Consequently, the answer to this question must be that consideration of the question has disclosed no factor of such a kind as to affect the validity of Article 4 (2) of Commission Regulation No 1530/78.

Costs

24 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Verwaltungsgericht Frankfurt am Main, costs are a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question referred to it by the Verwaltungsgericht Frankfurt am Main, by an order of 19 March 1987, hereby rules:

(1) Article 4 (2) of Commission Regulation No 1530/78 laying down rules for the application of the system of aid in respect of certain products processed from fruit and vegetables must be interpreted as meaning that the keeping of a stock

account, containing all the information mentioned in that provision, constitutes a condition for the grant of the production aid provided for in Council Regulation No 516/77, and that any doubts as to the accuracy of certain entries in that stock account may be resolved by reference to other additional documents.

(2) Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Article 4 (2) of Commission Regulation No 1530/78.

Koopmans Kakouris Rodríguez Iglesias

Delivered in open court in Luxembourg on 18 October 1988.

J.-G. Giraud
Registrar

T. Koopmans
President of the Fourth Chamber