JUDGMENT OF THE COURT (Sixth Chamber)

12 October 2000 *

In Case C-372/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court), for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Ministry of Agriculture, Fisheries and Food,

ex parte: **J.H. Cooke & Sons,**

on the interpretation of the first paragraph of Article 2 of Commission Regulation (EC) No 762/94 of 6 April 1994 laying down detailed rules for the application of Council Regulation (EEC) No 1765/92 with regard to the set-aside scheme (OJ 1994 L 90, p. 8),

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris and R. Schintgen (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— J.H. Cooke & Sons, by S. Isaacs QC, M. Demetriou, Barrister, and D. de Ferrars, Solicitor,

— the United Kingdom Government, by R. Magrill, of the Treasury Solicitor's Department, acting as Agent, assisted by P.M. Roth QC,

— the Danish Government, by J. Molde, Head of Division in the Ministry of Foreign Affairs, acting as Agent,

— the Finnish Government, by H. Rotkirch and T. Pynnä, Valtionasiamiehet, acting as Agents,

— the Swedish Government, by A. Kruse, Departementsråd in the Legal Service (EU) of the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by P. Oliver, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of J.H. Cooke & Sons, of the United Kingdom Government and of the Commission at the hearing on 27 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2000,

gives the following

Judgment

1 By order of 25 August 1998, received at the Court on 16 October 1998, the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of the first paragraph of Article 2 of Commission Regulation (EC) No 762/94 of 6 April 1994 laying down detailed rules for the application of Council Regulation (EEC) No 1765/92 with regard to the set-aside scheme (OJ 1994 L 90, p. 8; 'the implementing regulation').

2 The question was raised in proceedings between J.H. Cooke & Sons ('Cooke'), a company which owns and runs Bates Farm at Maer (United Kingdom), and the Ministry of Agriculture, Fisheries and Food ('MAFF') concerning the latter's rejection of an application by Cooke for a compensatory payment under Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12), as amended by Council Regulation (EC) No 231/94 of 24 January 1994 (OJ 1994 L 30, p. 2) and Council Regulation (EC) No 1460/95 of 22 June 1995 (OJ 1995 L 144, p. 1) ('the basic regulation').

The legislative background

3 Article 1 of the basic regulation establishes a system of compensatory payments for large-scale crop producers. 'Arable crops' within the meaning of that regulation are to be understood as those listed in Annex I to the regulation, which, in the version applicable at the material time, distinguishes between cereals, oilseeds and protein crops.

4 Article 2(1) of the basic regulation provides that Community producers of arable crops may apply for a compensatory payment under the conditions set out in Title I of the regulation. The second subparagraph of Article 2(2) provides that the compensatory payment is granted for the area which is down to arable crops or subject to set-aside in accordance with Article 7 of the same regulation.

5 Articles 4, 5 and 6 of the basic regulation lay down detailed rules for calculating the compensatory payments for each of the arable crops mentioned in paragraph 3 of this judgment.

6 In order to benefit from those compensatory payments, producers are required, in accordance with Article 2(5) of the basic regulation, to set aside part of the land of their holding in return for compensation.

7 Article 7 of the basic regulation lays down detailed rules relating to that obligation to set aside land, applicable to each producer applying for compensatory payments under the general scheme.

8 Article 7(3) and the first subparagraph of Article 7(4) of the basic regulation provide:

'3. Member States shall apply appropriate environmental measures which correspond to the specific situation of the land set aside.

4. The land set aside may be used for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption, provided that effective control systems are applied.'

9 Article 7(5) of the basic regulation fixes the amount of the compensation to be paid in respect of the obligation to set aside land by reference to the compensatory payment to be made for cereals.

10 Under the first paragraph of Article 9 of the basic regulation:

'Applications for the compensatory payment and for fulfilling the set-aside obligations may not be made in respect of land which was under permanent pasture, permanent crops, forest, or non-agricultural uses on 31 December 1991.'

11 The first paragraph of Article 2 of the implementing regulation, based on Article 12 of the basic regulation, provides:

'Without prejudice to Article 7(4) of Regulation (EEC) No 1765/92, "set-aside" means the leaving fallow of an area which has been cultivated in the previous year with a view to a harvest.'

12 Under Article 3(2) of the implementing regulation:

'The areas set aside must be cared for so as to maintain good cropping conditions. They may not be used for agricultural production of any sort other than that referred to in Article 7(4) of Regulation (EEC) No 1765/92, nor put to any lucrative use incompatible with the growing of an arable crop.'

13 Under Article 3(3) of the implementing regulation:

'Member States shall apply the appropriate measures which correspond to the specific situation of the land set aside so as to ensure the protection of the environment ...'.

14 Article 3(4) of the implementing regulation provides:

'To be considered under the scheme provided for in Regulation (EEC) No 1765/92, the areas set aside must:

— have been farmed by the applicant during the previous two years, save in special cases, duly justified according to objective criteria laid down by the Member State concerned ...

— remain set aside for a period commencing on 15 January at the latest and ending on 31 August at the earliest. However, Member States shall set the conditions under which producers may be authorized to sow seed, from 15 July, for harvesting in the following year and the conditions to be met in order for grazing to be authorised from 15 July in Member States where transhumance is traditionally practised ...'.

15 Under Article 4(1) of the implementing regulation:

'The rotational set-aside obligation referred to in the second subparagraph of Article 7(1) of Regulation (EEC) No 1765/92 shall be regarded as met where none of the plots withdrawn has been set aside under the special set-aside referred to in Article 2(6) or under the set-aside referred to in Article 7 during one of the previous five years. However, a plot which has already been set aside may be reused if the producer has no further land available enabling him to comply with the abovementioned period.'

16 Article 6(1), first indent, of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1), including the support system for producers of certain arable crops established by the basic regulation, provides that, in order to be eligible under one or more Community schemes, each farmer must submit, for each year, an 'area' aid application indicating the agricultural parcels, including areas under forage crops, agricultural parcels covered by a set-aside measure for arable land and those laid fallow.

17 Article 4 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391, p. 36) specifies the information which an 'area' aid application must contain.

18 Article 6(1) of the same regulation provides:

'Administrative and on-the-spot checks shall be made in such a way as to ensure effective verification of compliance with the terms under which aids and premiums are granted.'

19 Article 9 of Regulation No 3887/92 sets out the sanctions which apply where the competent authorities find that the area declared in the 'area' aid application differs from that actually determined on inspection. In particular, Article 9(2) provides that, where the area declared in an 'area' aid application exceeds the area determined by more than 20%, no area-linked aid is to be granted. The final subparagraph of Article 9(2) provides that, for the purposes of Article 9, 'determined area' means the area for which all of the conditions laid down in the rules have been met.

The dispute in the main proceedings and the question referred to the Court

20 On 16 April 1997 Cooke submitted to MAFF an 'area' aid application covering 60.64 hectares of cereal crops, 23.90 hectares of oilseed crops and 5 hectares of land left fallow. It is undisputed that, during 1996, the latter had been sown with Italian rye-grass, which is a temporary grass. Cooke maintains — but MAFF is not in a position to verify — that that grass was cut and used for silage during 1996.

21 On 17 September 1997, MAFF rejected Cooke's application on the ground that the land left fallow did not fulfil the conditions for being regarded as 'set-aside land', since it had not been cultivated with a view to a harvest during the preceding year within the meaning of the first paragraph of Article 2 of the

implementing regulation. Cooke was therefore fined, and lost its right to all the aid which it had applied for, including that relating to cereals and oilseeds, amounting to a total sum of GBP 28 000.

22 Following an appeal by Cooke lodged on 26 September 1997, MAFF confirmed its rejection of the application by adopting a new decision on or about 2 October 1997.

23 Leave having been given on 28 January 1998 to apply for judicial review, Cooke's principal argument before the national court is that MAFF was wrong to hold that cultivation of the fallow land in the year preceding the set-aside period by sowing grass which was subsequently cut or uprooted and removed rendered that land ineligible for consideration the following year as set-aside land within the meaning of the Community rules.

24 MAFF maintains, on the other hand, that, bearing in mind the purpose of set-aside, which is to reduce agricultural production, land set aside must, in order to qualify for a compensatory payment, have been cultivated during the year preceding the set-aside period for the purposes of such agricultural production.

25 Taking the view that, in those circumstances, the decision in the case turned on an interpretation of the first paragraph of Article 2 of the implementing regulation,

the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court) decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is the expression "an area which has been cultivated in the previous year with a view to a harvest" in Article 2 of Commission Regulation (EC) No 762/94 of 6 April 1994 laying down detailed rules for the application of Council Regulation (EEC) No 1765/92 with regard to the set-aside scheme to be interpreted as including land which has been in grass the previous year, where the grass has been cut and used for silage?'

26 In order to reply to that question, it should first be noted that, according to the second recital in the preamble to the basic regulation, the aim of the support system established by the regulation for producers of certain arable crops is to ensure a better market balance by approximating Community prices for those crops to the prices of the world market and to compensate for the loss of income caused by the reduction of the institutional prices by a compensatory payment to producers who grow such products.

27 In accordance with the second subparagraph of Article 2(2) of the basic regulation, that compensatory payment is granted not only for the area down to arable crops, as defined in Annex I to the regulation, but also for the area of set-aside to which the producers of such arable crops are required to give effect, pursuant to the second subparagraph of Article 2(5) and to Article 7 of the basic regulation, if they wish to receive a compensatory payment in respect of their agricultural production.

28 Secondly, it should be noted that the wording of the first paragraph of Article 2 of the implementing regulation requires only that the setting aside of land which must be carried out in order to obtain a compensatory payment under the basic

regulation, and which itself opens a right to compensation, must relate to areas which, in the year preceding the set-aside period, were cultivated with a view to a harvest.

29 There is no provision in the relevant Community legislation requiring the land set aside pursuant to Articles 2(5) and 7 of the basic regulation to have been sown the previous year with specific crops, and, in particular, with one of the arable crops listed in Annex I to that regulation.

30 Article 7(3) of the basic regulation and Article 3(2) and (3) of the implementing regulation do, admittedly, provide that the land set aside must be cared for so as to ensure the protection of the environment and maintain good cropping conditions. Similarly, Article 7(4) of the basic regulation authorises the use of set-aside land for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption.

31 However, none of those provisions concerns the conditions of maintenance and use of the set-aside land during the year preceding the set-aside period, which are alone at issue in the main proceedings.

32 The only provision of the Community legislation which excludes certain areas from the benefit of the support system established by the basic regulation by reason of the use made of them before their set-aside is Article 9 of that regulation, which provides in its first paragraph that applications concerning the compensatory payment and set-aside declarations may not be made in respect of land which was under permanent pasture, permanent crops, forest or non-agricultural uses on 31 December 1991.

33 In those circumstances, it must be concluded that all land sown during the year preceding the set-aside period, except that referred to in the first paragraph of Article 9 of the basic regulation, falls within the definition in the first paragraph of Article 2 of the implementing regulation and is eligible for compensatory 'set-aside' payments, regardless of the type of crop grown there, provided the land was cultivated with a view to harvest.

34 Accordingly, an area temporarily under grass, intended to be cut and then used for silage, which, in those circumstances, has not been left as grassland, must be regarded as having been cultivated with a view to harvest.

35 That conclusion is in accordance with the aims of the support system established by the basic regulation for producers of certain arable crops, of which the set-aside of land constitutes an essential component.

36 Any set-aside of cultivated land, regardless of the crop previously sown, thus including set-aside land previously under grass with a view to harvest, contributes to the reduction of the areas capable of being given over to arable production within the meaning of the basic regulation. Such reduction, in turn, helps to ensure a better market balance, in accordance with the second recital in the preamble to that regulation.

37 Moreover, as the Advocate General has pointed out in paragraph 44 of his Opinion, to limit the support system for producers of certain arable crops to that land which, in the year before it was set aside, was given over to the production of arable crops within the meaning of the basic regulation would risk encouraging producers to sow their land with such crops during that year and thus be likely to make it more difficult to attain the aim of market stabilisation.

38 In the light of the above considerations, the answer to the question referred must be that the first paragraph of Article 2 of the implementing regulation must be interpreted as meaning that the expression 'an area which has been cultivated in the previous year with a view to a harvest' covers land previously under grass that has subsequently been cut and used for silage.

The temporal effects of this judgment

39 In the event that the Court should reply to the question referred to it in the affirmative, the United Kingdom Government asks the Court to limit the temporal effects of its judgment.

40 In support of that request, the United Kingdom Government argues, first, that the competent national authorities applied their interpretation of the first paragraph of Article 2 of the implementing regulation in good faith, given that, notwithstanding the repeated requests for clarification and information which they sent to the Commission in that respect between 1992 and 1997, the Commission did not warn them of any error of interpretation which they were committing.

41 The United Kingdom Government further argues that an affirmative reply to the question, without a temporal limitation of the judgment's effects, would involve considerable administrative and practical complications, since the competent authorities would be obliged to re-examine up to 10 000 files dealt with since 1993 in the light of the interpretation given by the Court.

42 It should be noted that it is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order,

be moved to restrict for any person concerned the opportunity of relying upon a provision which it has interpreted with a view to calling in question legal relationships established in good faith (Case C-104/98 *Buchner and Others* v *Sozialversicherungsanstalt der Bauern* [2000] ECR I-3625, paragraph 39). Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties (Case C-57/93 *Vroege* v *NCIV* [1994] ECR I-4541, paragraph 21).

43 In this case, the administrative and practical difficulties arising from the re-examination of numerous files, which the United Kingdom Government has pleaded, cannot be considered as serious difficulties, especially since it is normally for the producers concerned to provide evidence that, during the year preceding the set-aside of land by virtue of which they have claimed the benefit of the support measures laid down in the basic regulation, they sowed their land with temporary grass which they subsequently cut and used for silage.

44 Whilst it is true that the Commission did not reply to numerous letters sent to it by the United Kingdom Government, its written observations show that the Government knew, from July 1997, that the Commission had doubts as to the validity of the interpretation adopted by the United Kingdom, and that the Commission clearly told the Government, at a bilateral meeting on 30 September 1997, that it did not agree with that interpretation.

45 These factors did not cause the United Kingdom Government to change its position, as is shown by the fact that, at the beginning of October 1997, it

confirmed the rejection of Cooke's application for a compensatory payment and continued to argue its own interpretation before the national court.

46 In those circumstances, the United Kingdom Government cannot validly claim, in the context of these proceedings before the Court, that the Commission's stance led it reasonably to consider that the first paragraph of Article 2 of the implementing regulation did not cover land such as that at issue in the main proceedings.

47 There is therefore no reason to limit the temporal effects of this judgment.

Costs

48 The costs incurred by the United Kingdom, Danish, Finnish and Swedish Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 question referred to it by the High Court of Justice of England and Wales, Queen's Bench Division (Divisional Court) by order of 25 August 1998, hereby rules:

The first paragraph of Article 2 of Commission Regulation (EC) No 762/94 of 6 April 1994 laying down detailed rules for the application of Council Regulation (EEC) No 1765/92 with regard to the set-aside scheme must be interpreted as meaning that the expression 'an area which has been cultivated in the previous year with a view to a harvest' covers land previously under grass that has subsequently been cut and used for silage.

Gulmann Skouris Schintgen

Delivered in open court in Luxembourg on 12 October 2000.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber