JUDGMENT OF THE COURT (Fourth Chamber)

12 May 2005 *

In Case C-42/04,

Reference for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 23 January 2004, received at the Court on 3 February 2004, in the proceedings

Maatschap J. B. en R. A. M. Elshof

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (Fourth Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, N. Colneric and E. Levits, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M.-F. Contet, Principal Administrator,

* Language of the case: Dutch.

having regard to the written procedure and further to the hearing on 10 March 2005,

after considering the observations submitted on behalf of:

— Maatschap J. B. en R. A. M. Elshof, by A.B. Zwierstra, engineer,

— the Netherlands Government, by H.G. Sevenster and S. Terstal, acting as Agents,

— the Commission of the European Communities, by T. van Rijn and A. Nijenhuis, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of the term 'batch' in Article 4(3) of Commission Regulation (EC) No 1046/2001 of 30 May 2001 adopting exceptional support measures for the markets in pigmeat and veal in the Netherlands (OJ 2001 L 145, p. 31).

2 This reference has been made in the context of a dispute between Maatschap J. B. en R. A. M. Elshof ('Elshof') and the Minister van Landbouw, Natuur en Voedselkwaliteit (Netherlands Minister for Agriculture, Nature and Food Quality) ('the Minister'), concerning the amount of aid granted to Elshof for a delivery of calves destined for rendering.

Legal background

Community legislation

3 Regulation No 1046/2001 adopts exceptional support measures due to the outbreak of foot-and-mouth disease in the Netherlands. One of the measures taken is the provision of subsidies for producers for the delivery of calves coming from the areas affected by the disease and destined for rendering.

4 Article 1(3) of the regulation provides:

'From 27 April 2001 producers may benefit, on request, from an aid granted by the competent Dutch authorities for the delivery to them of calves under 12 months of age falling under CN code 0102 90.'

5 Article 2 of the same regulation provides:

'Only live animals raised in the ... zones [affected by the disease] can be delivered, provided that the veterinary provisions laid down by the Dutch authorities apply in the zones on the day the animals are delivered, that the animals are not vaccinated against foot and mouth disease, and on the condition that on the day of delivery the transport of animals from the farm to the slaughterhouse pursuant to the conditions laid down in Article 9(2) and (3) of Directive 85/511/EEC is not permitted.'

6 According to Article 3 of Regulation No 1046/2001:

'On the day they are delivered, the animals shall be weighed and killed in such a way as to prevent the disease from spreading.

They shall be transported without delay to a rendering plant ... .

However, the animals may be transported to a slaughterhouse where they shall be slaughtered immediately and may be stored in a cold store prior to transport to the rendering plant. Slaughter and storage must be carried out in accordance with Annex II hereto.

...'

7 Article 4(3) of the said regulation fixes the amount of aid in the following terms:

'The aid for calves provided for in Article 1(3), at farm gate, shall be EUR 200 per 100 kilograms live weight. For calves weighing more than 260 kilograms on average per batch, the aid cannot be higher than the aid fixed for calves weighing 260 kilograms on average per batch.'

8 According to point 1 of Annex II to Regulation No 1046/2001, '[o]n the day of delivery, the animals are to be weighed by load and slaughtered in a slaughterhouse'.

National legislation

9 Article 1 of the Scheme for Subsidising Purchases in Foot-and-Mouth Disease Protection and Surveillance Zones (*Staatscourant* 2001, No 82), as amended by decree of 14 May 2001 (*Staatscourant* 2001, No 93; 'the Subsidy Scheme'), which entered into force on 27 April 2001, provides:

'In this scheme, the following meanings shall apply:

...

(n) batch: veal calves ... which are removed from one holding by one means of transport.'

10 Article 2 of the scheme provides:

'In accordance with the following provisions, the Minister shall, upon application, grant a subsidy for the purchase for rendering of veal calves. ...'

11 According to Article 5(1) of the scheme:

'The subsidy for purchase for rendering shall amount, in the case of veal calves as referred to in the second paragraph of Article 3, to NLG 440.74 [EUR 200] per 100 kilograms live weight, subject to a maximum average weight per batch of 260 kilograms per animal.'

Facts of the dispute and the question referred for a preliminary ruling

12 On 12 May 2001 Elshof delivered 257 veal calves destined for rendering. Those calves were removed in four lorries, each lorry load having been weighed separately.

13 On 29 June 2001 the Minister made four decisions relating to the four lorry loads of calves. By each of those decisions, he granted Elshof a subsidy limited to the lorry load concerned. In accordance with the Subsidy Scheme, the Minister treated each lorry load as a separate batch.

14 On 7 August 2001 Elshof lodged an objection to each of those four decisions. It claimed that all the animals removed from its holding on the same day were to be regarded as one batch and not as four separate batches. Elshof is thus entitled to a subsidy of EUR 32 563 more than the amount it in fact received.

15 By decisions of 2 November 2001 the Minister rejected the aforementioned objections on the basis of the definition of the term 'batch' in the Subsidy Scheme.

16 Elshof lodged an appeal before the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) against the decisions to reject its objections, in which it asked whether the term 'batch' in the Subsidy Scheme is consistent with that appearing in Article 4(3) of Regulation No 1046/2001, read in conjunction with the term 'load' in point 1 of Annex II to the same regulation.

17 In the circumstances, the College van Beroep voor het bedrijfsleven decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does the term "batch" in Article 4(3) of Regulation (EC) No 1046/2001 have the same meaning as the term "load" in point 1 of Annex II to that regulation or must

the term "batch" be taken to mean all the animals which are delivered for rendering by a holding on one day or pursuant to one decision to purchase?'

On the question referred for a preliminary ruling

18 The Netherlands Government observes that neither Regulation No 1046/2001 nor other provisions of Community law give a precise definition of the term 'batch' in Article 4(3) of the regulation. In the absence of a Community definition, the Member States are competent to define the term and may give it the same meaning as the term 'load' which is used in point 1 of Annex II to the same regulation.

19 The Commission claims that, in view of the purpose of Regulation No 1046/2001, which is to alleviate for producers of calves the disastrous economic impact of the measures taken to combat foot-and-mouth disease, the term 'batch' must be interpreted as meaning all the animals delivered on the same day by one agricultural holding for the purpose of rendering and in connection with one decision to purchase.

20 On that point, it must first be noted that Article 1(3) of the aforementioned regulation provides for the grant of aid 'for the delivery ... of calves'. That aid is, according to Article 4(3) of the regulation, 'EUR 200 per 100 kilograms live weight', irrespective of the number of animals delivered and irrespective of the individual weight of those animals.

21 It is apparent from the multiple references to the day of delivery in Articles 2 and 3 of Regulation No 1046/2001 that all calves delivered in the course of one day constitute a delivery for which aid may be granted.

22 Article 4(3) of the regulation fixes a ceiling for the aid which is expressed in terms of average kilograms per batch. That provision states that '[f]or calves weighing more than 260 kilograms on average per batch, the aid cannot be higher than the aid fixed for calves weighing 260 kilograms on average per batch'.

23 Regulation No 1046/2001 makes no express reference to the law of the Member States for the purpose of determining the meaning and scope of the term 'batch'. It is an independent concept of Community law, the interpretation of which must take into account the context of Article 4(3) of Regulation No 1046/2001 and the purpose of that regulation (see, to that effect, Cases 327/82 *Ekro* [1984] ECR 107, paragraph 11; C-287/98 *Linster* [2000] ECR I-6917, paragraph 43, and C-373/00 *Adolf Truley* [2003] ECR I-1931, paragraph 35).

24 For that purpose, the Netherlands Government considers that the term 'batch' in Article 4(3) of Regulation No 1046/2001 may be treated in the same way as the term 'load' in point 1 of Annex II thereto.

25 However, a literal interpretation of the term 'batch' precludes the interpretation given by that Government. A batch is generally understood to mean a group of similar items which are not sold separately. Therefore the fact that items form part of different loads for their delivery does not preclude them from being described as a batch, but only in so far as the items have been sold collectively.

26 In addition, the fact that the Community legislature uses the two terms 'batch' and 'load' in Regulation No 1046/2001, in Article 4(3) and point 1 of Annex II respectively, confirms that the two terms do not have the same meaning.

27 Since, in the context of the regulation, a delivery of calves for which aid may be granted is made up of all calves delivered in the course of one day, as is apparent from paragraph 21 of this judgment, the term 'batch', as used in Article 4(3) of the regulation, must be understood to mean all calves which are delivered for rendering by a producer in the course of one day in connection with one sales transaction.

28 Secondly, consideration must be given as to whether this literal interpretation of the term is consistent with the objective of Regulation No 1046/2001.

29 For that purpose, it must be noted that the objective of that regulation is not only to avoid the spread of foot and mouth disease but also to provide financial aid to producers in the zones affected by the disease.

30 It is clear from the file that, because of the equiparation of the terms 'batch' and 'load' in the Subsidy Scheme, Elshof received a subsidy of EUR 101 077 for the four lorry loads of calves delivered in the course of one day. If the calves had been loaded onto a single lorry, Elshof would have received a subsidy of EUR 133 640 since, in that situation, the animals delivered would have been regarded as a single batch in accordance with Article 1 of the scheme.

31 The equiparation of the terms 'batch' and 'load', which results from the application of the scheme, therefore means that the means of transport chosen for the delivery of the animals can have a significant effect on the amount of aid received by the producer, whereas, according to the provisions of Regulation No 1046/2001, the weight of the calves delivered on one day should alone be decisive.

32 By contrast, if the term 'batch' is interpreted literally, the means of transport chosen by the producer is unlikely to affect the amount of the aid. That interpretation is therefore more likely to promote attainment of the objective of Regulation No 1046/2001.

33 The Netherlands Government also points out that, in the context of the procedure for the clearance of accounts relating to the implementation of aid granted on the basis of Article 4(4) of Commission Regulation (EC) No 413/97 of 3 March 1997 adopting exceptional support measures for the market in pigmeat in the Netherlands (OJ 1997 L 62, p. 26), which led to the judgment of 24 February 2005 in Case C-318/02 *Netherlands* v *Commission*, not yet published in the ECR, the interpretation of the term 'batch' as relating to all the animals delivered from one producer in the course of one day was explicitly rejected.

34 However, it is appropriate to note that Article 4(4) of Regulation No 413/97 provides for a division of the animals referred to, namely piglets, into different categories according to their weight, corresponding to different levels of aid. Even though that regulation referred to average weight per batch in order to determine each category of animals and the corresponding aid, its purpose was in fact to grant subsidies for the animals according to their individual weight (see *Netherlands* v *Commission*, cited above, paragraphs 89 to 91).

35 By contrast, Regulation No 1046/2001 does not introduce several bands of aid corresponding to different categories of calves. Indeed, as has already been stated in paragraph 20 of this judgment, the aid is 'EUR 200 per 100 kilograms live weight', irrespective of the individual weight of the calves.

36 It follows that, contrary to Regulation No 413/97, if the term 'batch' in Article 4(3) of Regulation No 1046/2001 is interpreted literally, there is no risk of the producer

receiving aid from too high a band for the category of animals delivered for rendering.

37 It follows from all the above that the term 'batch' within the meaning of Article 4(3) of Regulation No 1046/2001 refers to all calves which are delivered for rendering by a producer on one day in connection with one sales transaction.

Costs

38 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

The term 'batch' within the meaning of Article 4(3) of Commission Regulation (EC) No 1046/2001 of 30 May 2001 adopting exceptional support measures for the markets in pigmeat and veal in the Netherlands refers to all calves which are delivered for rendering by a producer on one day in connection with one sales transaction.

[Signatures]