JUDGMENT OF THE COURT
15 January 1987 *

In Case 253/84,

Groupement agricole d'exploitation en commun (GAEC) de la Ségaude, having its registered office at La Clayette (France), represented by Lise Funck-Brentano, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marlyse Neuen-Kaufmann, 18 avenue de la Porte-Neuve,

applicant,

supported by

Fédération nationale des syndicats d'exploitants agricoles (FNSEA), Paris, represented by Lise Funck-Brentano, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marlyse Neuen-Kaufmann, 18 avenue de la Porte-Neuve,

intervener,

v

Council of the European Communities, represented by Antonio Sacchettini, Director in the Council's Legal Department, assisted by Arthur Brautigam, Principal Administrator in the Council's Legal Department, with an address forservice in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer,

and

Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Séché, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendants,

* Language of the Case: French.

supported by

Federal Republic of Germany, represented by Martin Seidel, Ministerialrat, acting as Agent, assisted by Dietrich Ehle, of the Cologne Bar, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany,

intervener,

APPLICATION for damages under Article 178 and the second paragraph of Article 215 of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot, T. F. O'Higgins and F. Schockweiler, Presidents of Chambers, G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet and J. C. Moitinho de Almeida, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 15 May 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 September 1986,

gives the following

Judgment

1 By an application lodged at the Court Registry on 29 October 1984, the Groupement agricole d'exploitation en commun de la Ségaude, hereinafter referred to as 'GAEC', brought an action under Article 178 and the second paragraph of Article 215 of the EEC Treaty against the Council and the Commission of the European Communities for compensation for the damage which it claims to have sustained as a result of Council Decision 84/361/EEC of 30 June 1984 (Official Journal 1984, L 185, p. 41) and for a declaration that the European Economic Community is liable for any future damage suffered by it as a result of that decision.

2 Decision 84/361, which provides that 'for the period 1 July 1984 to 31 December 1988 the aid granted by the Federal Republic of Germany in the form of VAT relief shall be deemed to be compatible with the common market up to a maximum of 5% of the ex-VAT price paid by the purchaser for the agricultural product', was adopted with a view to offsetting the loss of income suffered by German farmers as a result of the progressive dismantling of the system of monetary compensatory amounts (MCAs).

3 GAEC, supported by the Fédération nationale des syndicats d'exploitants agricoles (FNSEA), maintains that Council Decision 84/361 is unlawful and that, by distorting competition in favour of German farmers, that decision has caused it and will cause it in the future considerable damage for which it is entitled to claim compensation.

4 In GAEC's view the contested decision is unlawful in so far as it was adopted pursuant to Article 93 (2) of the EEC Treaty, which is not applicable in this case, and, in any event, constitutes an unlawful application of the procedure provided for in that provision. In addition, it considers that the decision at issue disregarded the principle of non-discrimination in so far as the excessive compensation granted to German farmers for the abolition of MCAs diverted the Sixth VAT Directive from its proper aim, which is to secure competitive neutrality as between the Member States, and infringed the principle of proportionality in so far as VAT was used as the instrument for granting the aid to German farmers. Lastly GAEC maintains that the decision is not only incompatible with Article 96 of the Treaty, which provides that any repayment of taxation on a given product is not to exceed the tax already levied on that product, but also results in a reduction of the Community's own resources.

5 The Commission has submitted observations on certain legal questions but has not presented any conclusions as regards the substance, since it considers that in proceedings concerning non-contractual liability pursuant to Articles 178 and 215 of the Treaty the Community ought to be represented by the institution whose act or omission gave rise to liability, that is to say, in this case, the Council. For its part, the Council maintains that some of the heads of claim are inadmissible and that the others are unfounded.

6 GAEC goes on to argue that Decision 84/361 has already caused it loss of profits on its sales of cattle, poultry and milk during the second half of 1984 and will, in any event, cause it to suffer substantial damage in the future.

7 The Council contests the existence of the damage alleged by GAEC and the possibility of proving that there is a causal link between the decision and the damage that GAEC claims that it has suffered or is going to suffer.

8 Reference is made to the Report for the Hearing for the facts of the case, the course of the procedure and the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 With a view to considering whether the action is well founded it is appropriate to recall the conditions in which the Community may be held to be liable under the second paragraph of Article 215 of the EEC Treaty. The Court has consistently held (judgment of 2 July 1974 in Case 153/73 *Holtz & Willemsen GmbH* v *Council and Commission* [1974] ECR 675; and judgment of 4 March 1980 in Case 49/79 *Richard Pool* v *Council* [1980] ECR 569) that Community liability depends on the coincidence of a set of conditions as regards the unlawfulness of the acts alleged against the institution, the fact of damage, and the existence of a direct link in the chain of causality between the wrongful act and the damage complained of.

10 It is in the light of those criteria that the merits of the case must be assessed. It must be observed that the applicant has sought mainly to show that Council Decision 84/361 was unlawful and has developed a number of arguments in that connection, whereas as regards the fact of the damage and the existence of a

causal link between that decision and the damage complained of, its allegations are imprecise. The first point to be considered, therefore, is whether the applicant has made out the fact of the damage for which it is seeking compensation and, if so, whether there is a causal link between the decision and that damage.

11 The preliminary observation may be made that GAEC maintains that the damage for which compensation is sought arose because the aid granted to German farmers by virtue of Decision 84/361 enabled those farmers to reduce their prices and hence to increase very substantially their exports to France of beef and veal, milk and poultry, triggering a fall in prices on the French market.

12 As regards the fact of the damage, although GAEC provisionally set an estimate of FF 60 000 on the damage which it allegedly suffered in respect of all of its products up to the date on which the application was brought, it has since provided no particulars of its losses on sales of milk and poultry, even though the Court asked it to provide figures, at least for the second half of 1984, for the damage suffered by it as a result of the discrimination caused by the contested aid.

13 In those circumstances it must be held that, as far as milk and poultry are concerned, GAEC has not proved that it has suffered damage.

14 As regards sales of beef and veal, GAEC, in answer to a question put by the Court, estimated its losses in the second half of 1984 at FF 10 894, on the basis of its profit and loss account and balance sheet for 1984.

15 The Council and the Government of the Federal Republic of Germany, which has intervened in support of the defendants' conclusions, contend that the low level of beef and veal prices on the French market during the period in question was due to factors other than the aid granted to German farmers. In particular, it was attributable to the increased supply of cows for slaughter following the implementation, as from 1 April 1984, of a super-levy introduced with a view to encouraging the dairy sector to reduce output.

16 It must be observed in the first place that, contrary to the statements made by GAEC, only part of the second half of 1984 was marked by an increase in imports into France of German beef and veal. It is clear from uncontested statistics produced by the Government of the Federal Republic of Germany as an annex to its intervention that it was only in July and August 1984 that there was a discernible increase in German exports to France of beef and veal as compared with the corresponding period of 1983, whereas in subsequent months such exports were running at a lower level than in the corresponding period of 1983.

17 Furthermore, it must be emphasized that increases, and, on occasion, even higher increases in imports of German beef and veal had already been recorded in the early months of 1984, even prior to the adoption of Decision 84/361.

18 It is also clear from the statistics on beef and veal price trends produced by the parties at the Court's request that prices had already begun to decline on the French market in the closing months of 1983 and continued to fall during the first half of 1984, that is to say well before the entry into force of Decision 84/361.

19 Accordingly, it must be held that GAEC has not succeeded in showing that the decline in beef and veal prices in France was the direct consequence of the aforesaid decision.

20 In so far as GAEC, relying on the Court's judgment of 2 June 1976 in Joined Cases 56 to 60/74 *Kampffmeyer* v *Commission and Council* [1976] ECR 711, asks the Court to declare that the Community is liable in respect of damage which, although it is not yet in existence, is nevertheless 'imminent damage foreseeable with sufficient certainty', it must be observed that GAEC has not adduced any evidence in support of that claim other than the evidence put forward to support its view that there was a causal link between Decision 84/361 and the damage alleged to have been suffered by it. There is therefore even less reason for considering GAEC to have shown that the decision in question was, as the judgment cited above requires, the 'certain cause' of imminent and foreseeable damage.

21 It follows from the foregoing that GAEC has not been able to prove that the conditions of the fact of damage and the existence of a causal link between the contested act and the alleged damage are fulfilled in this case. That is sufficient ground for dismissing the action without it being necessary for the Court to pronounce on the lawfulness of the Council decision of 30 June 1984.

Costs

22 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicant, GAEC, and FNSEA, intervening in support of GAEC, have failed in their submissions, they should be ordered to pay the costs of the Council, the defendant, and of the Federal Republic of Germany, which intervened in support of the defendants, since those parties asked for costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders GAEC and FNSEA to pay the costs of the Council and of the Federal Republic of Germany.

Mackenzie Stuart Galmot O'Higgins Schockweiler Bosco Koopmans Due Everling Bahlmann Joliet Moitinho de Almeida

Delivered in open court in Luxembourg on 15 January 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President