ORDER OF THE COURT
20 May 1987 *

In Joined Cases 233 to 235/86

Champlor SA-Merlaut, Vitry-le-François (France), **and Others,** represented by Jean-Pierre Spitzer, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicants,

supported by

Assocation pour le maintien de l'élevage en Bretagne (AMEB), whose registered office is in Plérin (France), represented by Yves Avril, of the Saint-Brieuc Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

and by

Syndicat national des industries de l'alimentation animale (SNIA), whose registered office is in Paris, represented by Yves Capron, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

interveners,

v

Commission of the European Communities, represented by Denise Sorasio, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the Chambers of G. Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Regulation (EEC) No 2040/86 of 30 June 1986 laying down detailed rules for the application of the co-responsibility levy in the cereals sector is void,

* Language of the Case: French.

THE COURT,

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

Advocate General: J. L. da Cruz Vilaça
Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

Order

1 By applications lodged at the Court Registry on 5 September 1986, the applicants in the three joined cases, who are producers and individual undertakings set up in a variety of legal forms and who are engaged in livestock farming or the manufacture of feedingstuffs, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Commission Regulation No 2040/86 of 30 June 1986 laying down detailed rules for the application of the co-responsibility levy in the cereals sector (Official Journal 1986, L 173, p. 65) is void.

2 By orders of 11 February 1987 the Court allowed the intervention of Syndicat national des industries de l'alimentation animale and of Association pour le maintien de l'élevage en Bretagne in support of the applicants' conclusions.

3 Commission Regulation No 2040/86 implements Article 4 of Regulation No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals, as amended by Council Regulation No 1579/86 of 23 May 1986 (Official Journal 1986, L 139, p. 29). Article 4 provides for the introduction of a co-responsibility levy payable in respect of cereals produced in the Community and used for certain specific operations, one of which is first processing. On the basis

of that provision the contested regulation lays down detailed rules for the application of the co-responsibility levy, including in particular a definition of first processing, a definition of those operations which are exempt from the payment of the levy and rules relating to the collection and passing on of the levy.

4 By documents lodged at the Court Registry on 29 October 1986, the Commission, the defendant in these cases, raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure. In support of that objection it contends that Regulation No 2040/86 is general in scope and applies to the applicants on the same basis as it applies to all producers and users of cereals in the Community, namely about 5 200 000 farmers and some 5 000 manufacturers of cattle feed. Since the applicants' situation cannot be distinguished by any special feature from that of other farmers and manufacturers the contested rules are not of individual concern to them. In addition, the Commission maintains that the regulations are not of direct concern to the applicants because the whole of the levy charged is passed on to cereal producers, who are, consequently, the sole persons to bear the charge from an economic point of view.

5 On the other hand, the applicants and the interveners maintain in their observations on the objection of inadmissibility that in reality the contested regulation constitutes a decision which, although adopted in the form of a regulation, is of direct and individual concern to them. Since the levy is in fact imposed only on farmers who use industrial feedingstuffs made from cereals and on industrial and cooperative undertakings which process cereals into cattle feed, those traders, to which category the applicants belong, are in a very special situation. Moreover, the question of admissibility should be decided in their favour in order to ensure effective judicial protection of the applicants' rights.

6 It must be pointed out that the second paragraph of Article 173 of the EEC Treaty provides that an action brought by an individual for a declaration that a measure is void is admissible when that measure, although adopted in the form of a regulation, is in reality a decision of direct and individual concern to the applicant. The purpose of that provision is, in particular, to prevent the Community institutions from being able to deny an individual the right to institute proceedings against a decision which is of direct and individual concern to him simply by choosing to issue that decision in the form of a regulation; the provision is thus intended to make it clear that the choice of form cannot alter the nature of the measure.

7 An action brought by an individual is, however, inadmissible in so far as it is directed against a regulation within the meaning of the second paragraph of Article 189 of the EEC Treaty. The criterion for distinguishing between a regulation and a decision is, according to the established case-law of the Court, whether or not the measure at issue is of general application. It is therefore necessary to consider the nature of the contested measure and in particular the legal effects which it is intended to produce or does in fact produce.

8 In this case the purpose of Commission Regulation No 2040/86 must be considered to be the adoption of detailed rules for the application of the co-responsibility levy in the cereals sector, which was introduced by a Council regulation. It determines the operations in respect of which the levy is payable, subject to exempted operations, and lays down rules for determining the quantities which are subject to the levy and detailed rules concerning the collection and passing on of the levy. All these matters are defined in abstract and general terms on the basis of objective criteria relating solely to the nature of the products and the way in which they are processed, the identity of the persons who carry out the operations in question being irrelevant.

9 It follows that the contested regulation does not concern a closed circle of persons who are determined at the time of its adoption but constitutes a measure of general application which applies to objectively determined situations and produces legal effects with regard to categories of persons described in a generalized and abstract manner.

10 The argument put forward by the applicants and the interveners that the applications at issue should be declared admissible in order to provide them with effective judicial protection must be rejected. It must be pointed out that a plaintiff may, in support of an action brought against a national measure implementing a Community measure, plead that the Community measure is unlawful and thus require the national court to give a ruling on all the submissions made in that respect, if necessary after reference has been made to the Court of Justice for a ruling on its validity.

11 For the foregoing reasons the Court should make an order dismissing the applications as inadmissible without considering the substance of the case, in accordance with Article 91 (3) and (4) of the Rules of Procedure.

Costs

12 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants and interveners have failed in their submissions, they must be ordered to pay the costs jointly and severally.

On those grounds,

THE COURT

hereby orders as follows:

(1) The applications are dismissed as inadmissible.

(2) The applicants and interveners in each case are ordered to bear the costs jointly and severally.

Luxembourg, 20 May 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President