ORDER OF THE PRESIDENT OF THE COURT
13 DECEMBER 1984 [1]

Federal Republic of Germany
v Commission of the European Communities

(Monetary compensatory amounts — Dismantlement — Transitional measures)

Case 278/84 R

Application for interim measures — Suspension of the operation of a measure — Interim measures — Conditions for granting — Need to weigh up all the interests involved (Arts 185 and 186 of the EEC Treaty)

In Case 278/84 R

FEDERAL REPUBLIC OF GERMANY, represented by its Agent Martin Seidel, Ministerialrat, and Dietrich Ehle, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the Chancellery of the Embassy of the Federal Republic of Germany,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Karpenstein, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Legal Department, Jean Monnet Building, Kirchberg,

defendant,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

1 — Language of the Case: German.

ORDER

1 By an application lodged at the Court Registry on 23 November 1984, the Government of the Federal Republic of Germany requested the Court to suspend the operation of Articles 1, 2 and 3 of Commission Regulation (EEC) No 2677/84 of 20 September 1984 on transitional measures in readiness for the revaluation of the representative rate for the German mark on 1 January 1985 (Official Journal 1984, L 253, p. 31). On the same day the applicant brought an action for a declaration that those provisions were void.

2 That regulation was adopted on the basis of Article 7 of Council Regulation (EEC) No 855/84 of 31 March 1984 on the calculation and the dismantlement of the monetary compensatory amounts applying to certain agricultural products (Official Journal 1984, L 90, p. 1) which allows the Commission to adopt "transitional measures necessary for"..."avoiding disturbances following the revaluation of the representative rates of the German mark and the Dutch guilder as at 1 January 1985"

3 Under Article 1 of the contested regulation a maximum quantity of 2.5 million tonnes of cereals may be sold at the representative rate currently in force. Above that ceiling the rate valid with effect from 1 January 1985 is to apply. The article has retroactive effect to 14 September 1984.

4 The Commission took the view that, where sugar was concerned, the application, with effect from 1 January 1985, of a new rate would impel manufacturers to deliver into intervention quantities of sugar normally marketed after that date. Accordingly, the Commission made provision in Article 2 of the contested regulation for the application of the new representative rate as from the entry into force of the regulation, namely 21 September 1984.

5 Article 3 (1) of the regulation provides that a new weighted price for sugar-beet is to be applied for the entire 1984/85 marketing year, because otherwise, since harvesting takes place from October to December, sugar manufacturers would have to buy sugar-beet in 1984 still at the higher price, and resell it in 1985 at the low price, thus being placed at a disadvantage. Similarly with regard to potato starch, Article 3 (2) of the regulation

provides that the price adjustment should apply for the entire marketing year 1984/85 so that manufacturers will not have to bear the entire burden of the fall in value after 1 January 1985.

6 In its observations, the Federal Republic of Germany states that the Ministers of Agriculture agreed upon specific rules (Articles 3 and 4 of Regulation (EEC) No 855/84 to compensate for the loss of income for agricultural producers in the Federal Republic of Germany which results from the alteration in the representative conversion rate and the dismantling of positive compensatory amounts. However, the fall in prices after 1 January 1985 would also lead to a 5.2% fall in the value of stocks at the marketing and processing stage. For that reason Article 7 of Council Regulation No 855/84 grants an enabling power to the Commission by virtue of which the Commission was to adopt measures designed to offset the fall in prices at the marketing and processing stage.

7 Despite the strenuous efforts of the Federal Republic of Germany, the Commission failed for several months to draw up a plan to compensate for the fall in prices. Moreover, the transitional measures finally adopted made no provision for compensation to offset the fall in prices. On the contrary, and to the detriment of the German economic interests concerned, it changed both the time at which the new representative rates fixed in Council Regulation No 855/84 were to apply and the intervention rules relating to the market organizations.

8 The Federal Republic of Germany takes the view that the Commission has thus infringed Article 7 of Regulation No 855/84, under which authority is granted to compensate for the losses sustained at the marketing and processing stage only by paying Community subsidies and not by bringing forward the application of the new representative rates.

9 In addition the applicant relies on the following submissions:

In the Management Committee procedure the Commission failed to allow the national governments sufficient time to adopt a position on the new draft regulation;

The fixing of a ceiling for the sale of cereals to the intervention agencies gives rise to an unfair advantage for traders in the regions with the best climatic conditions, who had already bought the goods from the producers and who resold them to the intervention agencies before the entry into force of the regulation;

The method of calculation of the weighted rate provided for in Article 3 (1) of the regulation is incorrect;

Article 3 (2) discriminates against the producers of potato starch in relation to other starch producers;

The regulation constitutes a violation of the principles of non-retroactivity and of the protection of legitimate expectation.

10 The suspension is a matter of urgency because the transitional measures apply until 31 December 1984 and their implementation would entail irreparable economic consequences.

11 In reply to those submissions the Commission states that Article 7 of Regulation (EEC) No 855/84 was not intended to provide for compensation at the processing and marketing stage, a possibility which had never been mentioned at the Council meetings. The only compensation possible would have been compensation financed out of national funds for stocks existing at the date in question. Moreover, Article 7 does not state how the results referred to are to be achieved and no unilateral declaration was placed on record by the Federal Republic of Germany on that question. In that connection it must be stressed that, in accordance with Article 4 of Regulation No 855/84, the Community's participation in the financing of losses arising from revaluation suffered by all the German producers accounts for only about one-seventh of the total costs. The Commission states that the measures contained in Regulation No 2677/84 are limited to the absolute minimum necessary. Thus with regard to cereals, provision is made for exceptions in respect of the quantities which, having regard to the good harvest which was expected, would have been offered to intervention agencies in that sector under normal conditions. The Commission also contests the other submissions put forward by the applicant.

12 In the Commission's view, the Federal Republic of Germany has no direct interest in the action; it has an interest only as a third party. Moreover, the application for the suspension of the measures is not in the interests of the undertakings concerned, since the suspension of the operation of Article 3 of the contested regulation would mean that the German sugar industry and the German manufacturers of potato starch would have to pay their suppliers of sugar-beet and potatoes the minimum prices calculated on the basis of the old conversion rates. In addition, the Commission contends that the measures sought have not been shown to be urgent and necessary. On the contrary, the Federal Republic of Germany did not bring its action until the last day of the prescribed period.

13 The Commission points out that at the Council meeting the Federal Republic of Germany succeeded in obtaining an advance payment of the special aid for German farmers as from 1 July 1984, by claiming that the market "would already anticipate to a large extent in the second half of 1984" the change in the green rate for the German mark to be applied on 1 January 1985. If that were the case, there could not in any event be any question of considerable losses at the marketing stage in the cereals industry. As regards the sugar industry there are normally hardly any intervention sales, so that the loss could not be regarded as serious. For potato starch, no provision is made for intervention at Community level. In both those industries, the interests of the manufacturers had been duly taken into account by means of a reduction in the purchase prices.

14 Nor can the loss be regarded as irretrievable. As regards sugar and cereals, the undertakings concerned could continue to sell their stocks in unlimited quantities to the intervention agency and, if the regulation were declared void, there would be absolutely no difficulty in claiming and imposing the old, higher intervention price. On the other hand, if the operation of the measure were suspended, massive intervention sales would take place solely for speculative reasons and that would lead to additional expenditure by the European Agricultural Guidance and Guarantee Fund of several hundred million ECU, as the Federal Republic has itself admitted. In those circumstances it is quite clear that a suspension cannot be regarded as a provisional measure which does not prejudge the decision on the substance of the case. As regards potato starch, the application for the adoption of interim measures does not include any information suggesting that there has been irreparable damage.

15 It is established that in proceedings for the suspension of the operation of a measure, the relief sought must be provisional in the sense that it does not prejudge the decision on the substance of the case.

16 In that respect it would seem that the applicant's most important submission in that Article 7 of Regulation No 855/84 does not entitle the Commission to adopt transitional measures of the type introduced by the Commission in the contested regulation. On the contrary, that provision was introduced at the request of the Federal Republic of Germany, in order to resolve the problem of the fall in the value of stocks at the processing and marketing stages following the alteration of the representative conversion rate for the German mark on 1 Januray 1985.

17 In proceedings for the adoption of interim measures, it is enough to establish that such an interpretation cannot be regarded as so obvious that the Court can accept it without a serious risk of prejudging the arguments to be presented on the substance of the case.

18 For interim measures to be granted, not only must the factual and legal circumstances relied upon to obtain them establish a *prima facie* case for granting them but also the measures granted must be urgent in the sense that it is necessary for the measures to be adopted and to take effect before a decision is given by the Court on the substance of the case in order to avoid serious and irreparable damage to the party seeking them.

19 In the applicant's view, the urgency lies in the fact that the validity of the transitional rules introduced by the regulation is limited to 31 December 1984 and that a judgment in the main proceedings would therefore come too late. Considered in detail, the transitional measures provided for in the regulation would represent for marketing and processing operators a considerable financial burden of the order of 300 million German marks.

20 Although it is clear that the problem, considered solely from the applicant's point of view, may, *prima facie,* be regarded as urgent, it is necessary in proceedings under Articles 185 and 186 of the EEC Treaty to weigh up all the interests involved.

21 In this instance it is common ground that, if the Court suspends the operation of the contested regulation, massive quantities of the products in question will be sold to the intervention agencies before the end of 1984. The applicant itself does not dispute that the quantities sold in that way would approximately equal those which would normally have been offered in the whole of the quarter concerned, thus creating, inevitably, a serious disturbance of the market. In that respect it is impossible to disregard the risk of purely speculative offers being made to the intervention agencies. In those circumstances a suspension would clearly amount to prejudging the decision on the substance of the case.

22 As far as sugar and cereals are concerned, it appears, in addition, that if the regulation were subsequently to be declared void, the traders who sold those products to intervention agencies at a lower price would automatically receive a payment corresponding to the difference between the price paid and the old, higher intervention price without even being obliged to institute proceedings for compensation. There can therefore be no question of irreparable damage in their regard. In the case of potato starch, which is not an intervention product, the existence of specific irreparable damage has not been suggested by the applicant.

23 In addition it must be noted that following the meeting of the European Council of 25 and 26 June 1984 at Fontainebleau, the Council agreed to raise the rate of compensation for German farmers from 3% to 5% until 1988 and to grant that increased aid as from 1 July 1984, since the Federal Republic of Germany had claimed that the market would anticipate to a great extent from the beginning of the second half of 1984 the alteration in the green rate for the German mark fixed for 1 January 1985. In the light of that statement it seems doubtful whether the processing and marketing undertakings in the cereals sector still have large quantities acquired at the old price and that they have therefore suffered serious damage. As regards sugar, it is common ground that intervention sales are almost non-existent, so that the damage cannot be regarded as serious. The same applies to potato starch, which is not an intervention product. With respect to the two last-mentioned products it must be noted that Article 3 of the contested regulation, far from adversely affecting the manufacturers of sugar and potato starch, on the contrary, took account of their interests by reducing the purchase prices.

24 In those circumstances, since the applicant has not been able to show the existence of serious or irreparable damage, it would seem unnecessary to consider the alternative proposal made at the hearing by the applicant, namely that the operation of the regulation be suspended and that the intervention agencies and the other operators concerned be authorized to make the payment of the difference in price resulting from that suspension subject to the lodging of a security. Even a system of securities is not capable of preventing speculative sales to intervention agencies.

On those grounds,

THE PRESIDENT,

by way of interim decision,

hereby orders as follows:

1. **The application is dismissed;**

2. **The costs are reserved.**

Luxembourg, 13 December 1984.

J. A. Pompe
Deputy Registrar

A. J. Mackenzie Stuart
President