JUDGMENT OF THE COURT
27 January 1988 *

In Case 349/85

Kingdom of Denmark, represented by Laurids Mikaelsen, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Danish Embassy,

applicant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by H. R. L. Purse, Assistant Treasury Solicitor, acting as Agent, with an address for service in Luxembourg at the British Embassy,

intervener,

v

Commission of the European Communities, represented by its Legal Adviser, Peter Karpenstein, and Jens Christoffersen, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decisions 85/450 and 85/451 of 28 August 1985 on the clearance of the accounts presented by the Kingdom of Denmark in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1980 and 1981 (Official Journal, L 267, pp. 7 and 10) are partly void in regard to beef and veal,

* Language of the Case: Danish.

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, O. Due (President of Chamber), U. Everling, K. Bahlmann, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 17 June 1987,

after hearing the opinion of the Advocate General delivered at the sitting on 12 November 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 16 November 1985, the Kingdom of Denmark brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Commission Decisions 85/450 and 85/451 of 28 August 1985 on the clearance of the accounts presented by the Kingdom of Denmark in respect of the European Agriculture Guidance and Guarantee Fund, Guarantee Section, expenditure for 1980 and 1981 (Official Journal, L 267, pp. 7 and 10) are void in so far as those decisions did not permit to be charged to Community funds amounts of DKR 18 175 950.25 and DKR 31 664 013.16 paid by way of 'bovine meat' refunds for the 1980 and 1981 financial years respectively.

2 By order of 15 October 1986, the Court allowed the United Kingdom of Great Britain and Northern Ireland to intervene in support of the applicant's conclusions.

3 In the contested decisions, the Commission refused to charge to the EAGGF expenditure incurred by the Kingdom of Denmark in financing export refunds for preparations and preserves containing bovine meat on the basis of the fat-content of the exported products, on the ground that the annexes to the regulations providing for the refunds at issue as well as Commission Regulation No 187/80 of 29 January 1980 (Official Journal, L 23, p. 11) excluded the possibility of taking account of any fat.

4 In support of its application, the Danish Government claims that, by refusing to charge to the EAGGF the amounts referred to in the application, the Commission infringed the Treaty and the rules of law relating to its application, in particular, Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218):

(i) by basing itself on an incorrect interpretation of Regulation No 187/80 and the other regulations fixing export refunds in the beef and veal sector for 1980 and 1981;

(ii) by imposing, in a decision concerning the clearance of accounts adopted long after the expiry of the period prescribed in Article 5 of Regulation No 729/70, a legal argument which was not put forward earlier.

5 Reference is made to the Report for the Hearing for fuller details of the facts, 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.

6 In its first submission alleging an incorrect implementation of the regulations fixing export refunds in the beef and veal sector in 1980 and 1981, the Danish Government claims that the terms used in subheading ex 16.02 B III (b) 1 of the annex to the regulations, namely 'percentages of bovine meats (excluding offal and fat)', must be understood, in the absence of a specific definition in Community law, as referring to meats in the natural meaning of the word, that is to say, the musculature of the skeleton with its natural fat-content, both visible and invisible; the fat-content of that musculature may be as much as 30%. The interpretation adopted by the Commission is thus incompatible with the terms used in the abovementioned subheading.

7 The United Kingdom also considers that the Commission's interpretation does not follow from the applicable provisions. Since no Community provision defines the meat content of processed meat products or lays down how that content is to be determined, it is for the Member States to interpret those words in a reasonable and commonsense way. For its part, it based itself on the lean beef content of the products, meaning lean muscle tissue from which all visible fatty tissue had been separated, but which could contain up to 10% invisible fat.

8 On the other hand, the Commission considers that the term 'bovine meats (excluding offal and fat)' in subheading ex 16.02 B III (b) 1 means that, in calculating the meat content of a product in order to determine the amount of the export refund, the fat-content of the product must be excluded and since the rules contain no restriction as to the nature of the fat to be excluded, that term must be understood, for the purposes of the said calculation, as meaning fat in all its forms, whether added or naturally present, whether visible or invisible. In its view, that interpretation is the only one which is in conformity with the objective to be achieved by the export refunds scheme, which is intended to encourage exports of high-quality beef and veal.

9 It should first be noted that there is no definition in Community law of the terms 'meat' and 'fat'. Under those circumstances, the significance and scope of those terms must be determined by considering the general context in which they are used and their usual meaning in everyday language.

10 In that regard, it should first be noted that the purpose of the provision in which those terms are to be found is to determine the percentage of bovine meats used in preparations and preserves in order to determine the amount of the export refunds to be paid to producers under the general export refund scheme for beef and veal. That scheme, introduced by Commission Regulation No 678/77 of 31 March 1987 fixing the export refunds on beef and veal for the period beginning 1 April 1977 (Official Journal, L 84, p. 41) and maintained in effect by the regulations in question, is intended to facilitate the disposal outside the Community of beef and veal by the payment of grants intended to compensate for the difference between

the world market price and the guaranteed price within the Community, in accordance with the general objective of all export refund schemes, which is to stabilize the Community market by ensuring that producers receive a fair income.

11 Refunds are paid in respect both of bovine meats in the form of parts of animal carcases and for preparations and preserves containing bovine meats. In the latter case, the purpose of subheading ex 16.02 B III (b) 1 of the annex to the regulations is to restrict the benefit of the refund to the proportion of bovine meats used in the preparation, which may contain other ingredients, including other kinds of meat. In the absence of any contrary indication, the term 'meats' in that subheading cannot therefore have a meaning other than that which it has in the other provisions of the regulations in question. Those provisions indicate the parts of the animal in respect of which the refund is paid, without providing any details as to quality and without excluding, in particular, parts containing fat.

12 In the context of the scheme described above, it must be considered to what extent the terms used in the subheading, having regard to their ordinary meaning in the context under consideration, require that no account should be taken, for the purposes of calculating refunds, of fat in preparations and preserves containing bovine meats.

13 In that regard, it should be noted that the text of the subheading excludes from the expression 'bovine meats' both fat and offal. They constitute clearly distinguishable and separable parts of the animal. By using the terms 'fat' and 'offal' side by side, the wording in question must be understood as intended to exclude all parts of the animal which do not constitute meat in the narrow sense of the term and which are clearly distinct from meat. That is the meaning which is given to the expression 'meat free of fat' in everyday practice, in accordance with the meaning which is attributed to the word 'meat' in ordinary language.

14 Since there is no clear contrary intention in the text of the provision, a different meaning cannot be attributed to the expression 'bovine meats'. The provision must therefore be interpreted as meaning that fat attached to pieces of meat used in the

product and which appear to be clearly distinct therefrom is not to be regarded as bovine meat. An interpretation which also excludes any proportion of fat not apparant to the naked eye which may be inside the muscle tissue and which cannot be physically detached from the piece of meat used cannot be regarded as dictated by the provision.

15 The fact that Commission Regulation No 2429/86 of 31 July 1986 on the procedure for determining the meat content of meat preparations and preserves falling within subheading ex 16.02 B III (b) 1 of the nomenclature contained in the Annex to Commission Regulation No 2184/86 (Official Journal, L 210, p. 39) subsequently attributed a different sense to the subheading in point cannot influence the interpretation of the text in force at the material time (see the judgment of 18 January 1984 in Case 327/82 *Ekro* v *Produktschap voor Vee en Vlees* [1984] ECR 107, paragraph 22).

16 Since a rule whose breach inevitably entails financial consequences must be sufficiently clear and precise, the Commission was not entitled to rely on the terms of subheading ex 16.02 B III (b) 1 of the regulations applicable in 1980 and 1981 as a basis for imposing, at the time of the clearance of EAGGF accounts, an interpretation which was not dictated by the normal meaning of the words used. In so far as it took account, in calculating the meat content, only of the percentage of meat free of all fat and refused to take account of a proportion of fat normally inherent in muscle tissue, the Commission misapplied the provision at issue and the decisions must for that reason be declared void to the extent that they are contested.

17 Since the interpretation proposed by the Danish Government has not been accepted in its entirety, it must still be considered whether the second submission relied on could lead to a less qualified conclusion.

18 In that submission, it is alleged that the Commission was not entitled to put forward a new interpretation of the provision in a decision clearing accounts adopted long after the expiry of the period prescribed for that decision in Article 5 of Regulation No 729/70. The Danish Government points out that, until that time, the Commission had never raised any objections to the practice adopted by the Danish authorities.

19 In that regard, it should be pointed out that the management of EAGGF finances is principally in the hands of the national administrative authorities responsible for ensuring that the Community rules are strictly observed. That system, based on trust, does not involve any systematic supervision by the Commission, which moreover would in practice be impossible for it to carry out. Since the national authorities are responsible for verifying whether the conditions imposed by Community law for the incurring of expenditure are fulfilled, any supervision undertaken by the Commission can only be by way of spot checks. Since such intermittent supervision is inherent in the system, it is possible that irregularities may be discovered long after the events giving rise to them occurred. Until the accounts have been duly cleared, the Commission is required by Article 2 of Regulation No 729/70 to refuse to charge to the EAGGF refunds which have not been granted in accordance with the Community rules. That obligation does not disappear merely because the accounts are cleared after the expiry of the period prescribed in Article 5 of the abovementioned regulation. No penalty is imposed for failure to comply with that time-limit, which may therefore be regarded, having regard to the nature of the decision on the clearance of the accounts, the essential purpose of which is to ensure that expenditure incurred by the national authorities is in accordance with the Community rules, as a merely formal limit, save where the interests of a Member State are affected.

20 Under those circumstances, the submission must be rejected.

Costs

21 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under the first subparagraph of Article 69 (3), the Court may order that the parties bear their own costs in whole or in part where each party succeeds on some and fails on other heads, or where the circumstances are exceptional. Since the Danish Government's arguments were not entirely accepted, in so far as it argued that, in addition to invisible fat, inherent in muscle tissue, all fat, even visible, must be regarded as coming within the concept of 'meats', up to a percentage of 30% thereof, the parties should bear their own costs. Since the United Kingdom has not applied for the costs of its intervention, it should be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

(1) Declares that Commission Decisions 85/450 and 85/451 of 28 August 1985 on the clearance of accounts presented by the Kingdom of Denmark in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1980 and 1981, are void in so far as they did not accept for Community financing the sums of DKR 18 175 950.25 and DKR 31 664 013.16 paid by way of refunds in respect of 'bovine meats' for 1980 and 1981 respectively.

(2) Orders the parties to bear their own costs.

Bosco Due Everling

Bahlmann Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 27 January 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President