JUDGMENT OF THE COURT (Third Chamber)
9 January 1997 *

In Case C-255/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Consiglio di Stato (Italy) for a preliminary ruling in the proceedings pending before that court between

S. Agri SNC,

Agricola Veneta Sas

and

Regione Veneto

on the interpretation of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1), as amended by Council Regulation (EEC) No 1760/87 of 15 June 1987 (OJ 1987 L 167, p. 1), and as both amended by Council Regulation (EEC) No 1094/88 of 25 April 1988 (OJ 1988 L 106, p. 28), and of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production (OJ 1988 L 361, p. 13),

* Language of the case: Italian.

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, C. Gulmann and J.-P. Puissochet (Rapporteur), Judges,

Advocate General: M. B. Elmer,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— S. Agri SNC and Agricola Veneta Sas, by Wilma Viscardini Donà, of the Padua Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Contentious Diplomatic Affairs Department at the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato,

— the Commission of the European Communities, by Laura Pignataro and James Macdonald Flett, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the parties at the hearing on 12 September 1996,

after hearing the Opinion of the Advocate General at the sitting on 24 October 1996,

gives the following

Judgment

1 By order of 21 March 1995, received at the Court on 24 July 1995, the Consiglio di Stato (Italian Council of State) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1), as amended by Council Regulation (EEC) No 1760/87 of 15 June 1987 (OJ 1987 L 167, p. 1), and as both amended by Council Regulation (EEC) No 1094/88 of 25 April 1988 (OJ 1988 L 106, p. 28), and of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production (OJ 1988 L 361, p. 13).

2 Regulation No 797/85, as amended, requires Member States to introduce an aid scheme in order to promote the 'extensification' of production in certain sectors showing surpluses, in particular the beef and veal sector, extensification being defined as a reduction of at least 20%, for a period of at least five years, in the output of the product concerned without any increase in other surplus production capacity.

3 Under Article 1b(3) of Regulation No 797/85, as amended, Member States are to determine the conditions for granting the aid, including those for reducing output. In the case of beef and veal, it may be stipulated that the number of livestock units must be reduced by at least 20%. They are also to determine the amount of the

aid, the reference period, for the product concerned, for the purposes of calculating the reduction, and the undertaking to be given by the beneficiary for the purposes of, in particular, verifying that production has in fact been reduced.

4 In Regulation No 4115/88, the Commission laid down detailed rules for applying the aid scheme to promote the 'extensification' of production. Article 4(1) thereof provides that the reduction in output is to be ensured by the farmer according to the procedure laid down by the Member States in relation to the normal output of his agricultural holding on the basis of average annual output during a given reference period. Member States may inter alia provide for a 'quantitative' method based on the actual reduction in quantitative terms, in accordance with Article 6. Article 4(2) states that the reference period to be fixed by the Member States must be such that it is possible to determine the normal annual level of production of the holding concerned to be used as a reliable basis for calculating the reduction.

5 Article 6 of Regulation No 4115/88 provides that where the 'quantitative' method is applied, the reduction of at least 20% in output for each individual holding is to be calculated, for each of the products covered by the undertaking, in terms of the holding's entire output of those products. Again, where that method is applied, Article 7 provides that the reduction in output may be achieved via an equivalent reduction in the number of livestock units comprising the herd.

6 In application of the above regulations, Italy took as the reference period for livestock products the marketing years 1986/87 and 1987/88. Since the new scheme was not implemented until 1990, the period during which producers undertake to reduce their production ('the period of the undertaking') could not, however, begin to run until that year. The Italian rules nevertheless take account of any fluctuations in output occurring between the end of the reference period and the beginning of the period of the undertaking. Where the quantitative method is used, they provide in particular that, if the number of livestock units has decreased during that intermediate period, the stock farmer cannot benefit from aid where the

number of units planned to be reduced during the period of the undertaking proves to be less than 20% of the number of units raised during the reference period.

7 S. Agri SNC and Agricola Veneta Sas, the plaintiffs in the main proceedings, applied to the Ispettorato Regionale per l'Agricoltura di Padova (Regional Agricultural Inspectorate, Padua, 'the Inspectorate') for aid for 'extensification' of cattle production.

8 By decisions of 18 March 1991, the Inspectorate rejected their applications on the ground that, because sizeable reductions of the herd had already been made by the companies in the intermediate period between the end of the reference period and the beginning of the period of the undertaking, the subsequent reduction in their livestock in the course of the first year of the undertaking was in all less than 20% as compared with the number of livestock units raised during the reference period.

9 The two companies challenged the legality of the Inspectorate's decisions before the Tribunale Amministrativo Regionale (Regional Administrative Tribunal), Veneto. In particular they claimed that the Community rules required the percentage of the reduction which the producer undertakes to make to be calculated solely in relation to the reference period determined by the Member States and no fluctuations in output occurring during the intermediate period were to be taken into account.

10 By two judgments of 12 September 1992, the Tribunale Amministrativo Regionale, Veneto, declared the actions brought by the two companies to be inadmissible on the ground that they were time-barred, whereupon the companies appealed to the Consiglio di Stato.

11 Since it considered that an interpretation of several provisions of Council Regulation No 797/85, as amended, and of Commission Regulation No 4115/88 was necessary before it could decide the case, the Consiglio di Stato, sitting in its judicial capacity, decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

1. Is a provision of national law which, in the event of a period of time elapsing between the end of the reference period and the beginning of the period of the undertaking, takes into account not only the output (the number of units of livestock) for the reference period, in relation to output to be achieved during the period of the undertaking, but also fluctuations in output occurring during that intermediate period, compatible with the Community legal order, in particular Article 1b(3)(c) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures, inserted by Article 1 of Council Regulation (EEC) No 1094/88 of 25 April 1988, and with Articles 4(1) and (2), 7 and 10(1) of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production?

2. If so, is a provision of national law compatible with the Community legislation referred to above where, in the case of a reduction in the heads of livestock raised during the intermediate period between the end of the reference period and the beginning of the period of the undertaking, it not only excludes those animals from the aid but also provides that they must be excluded from the calculation of the minimum 20% reduction in output between the reference period and the period of the undertaking, which is a prerequisite for the grant of the aid (with the result, in particular, that the aid is not payable even in respect of the actual reduction in livestock envisaged in the period of the undertaking, where that reduction is less than 20% of the average number of livestock raised in the reference period)?

12 By these questions the national court is seeking, essentially, to ascertain whether Article 1b(3)(c) of Regulation No 797/85, as amended, and Article 4(1) and (2) of

Regulation No 4115/88 must be interpreted as allowing a Member State, where there has been a drop in output during the intermediate period between the end of the reference period and the beginning of the period of the undertaking, to make the grant of aid for 'extensification' in any case conditional on output achieved during the intermediate period being reduced, during the period of the undertaking, by an amount corresponding to at least 20% of output during the reference period.

13 The Italian Government and the Commission suggest that the reply to that question should be in the affirmative. The Community rules show clearly, in their view, that the reduction in output must take place during the period of the undertaking, pursuant to the undertaking expressly given by the producer. The Commission also states that the objective of the Community rules requires that beneficiaries of 'extensification' aid offer a true *quid pro quo* in terms of an actual decrease in their output, of the proportion provided for, during that period.

14 According to the plaintiffs in the main proceedings, it is on the contrary clear from the rules in question that the reduction in output of at least 20% must be assessed solely as compared with the output achieved during the reference period, as determined by the Member States, and no account should be taken of fluctuations in production occurring during the intermediate period. According to those companies, if that last period were taken into account that would amount to amending in practice the reference period fixed by the Italian authorities, with which the companies would nevertheless be bound to comply.

15 That interpretation must be accepted.

16 Article 1b(3)(c) of Regulation No 797/85, as amended, provides that the Member States are to determine the reference period for the product concerned, for the purposes of calculating the reduction. Further, it is clear from Article 4(1) in conjunction with Article 4(2) of Regulation No 4115/88 that the reference period must, in

particular, make it possible to determine the normal annual level of production of the holding concerned to be used as a reliable basis for calculating the reduction in output and that the reduction in output is to be ensured by the farmer in relation to his output during that period. It follows that reduction in output must be based on a comparison between output achieved during the period of the undertaking and average output during the reference period.

17 The interpretation for which the Italian Government and the Commission contend would amount to relating the reduction in output not to the normal output of the holding as determined by the reference period but to output during the intermediate period, since it is clear that the reduction thus calculated must still reach 20% of output during the reference period. Accordingly, in that system, the reference period is no longer taken into account except to measure the volume of the reduction in output.

18 The Commission nevertheless contends that both Article 1b(3)(d) of Regulation No 797/85, as amended, and Article 3(1) of Regulation No 4115/88 refer to the producer's undertaking actually to reduce his output; it necessarily follows that that reduction must result from the undertaking itself, and take place after the undertaking is given.

19 However, the regulations in question contain no mention of an intermediate period between the reference period, as fixed by the Member State concerned, and the date when the producer gives his undertaking. As the Advocate General pointed out in point 23 of his Opinion, the wording of those regulations suggests rather that it is assumed that the period of the undertaking during which the producer must reduce his output follows on immediately from the reference period used to calculate that reduction. Although that requirement implies that the reduction in output will take place after the undertaking is given, it cannot be concluded that that reduction can never take place, in whole or in part, previously.

20 The Commission considers, however, that its interpretation corresponds to the objective of the rules, which is to promote 'extensification', while providing, in favour of the producer who undertakes actually to decrease his output, for compensation based on the loss of income due to such 'extensification'. That scheme involves, on the part of the beneficiaries of aid, a real *quid pro quo* in terms of actual reduction in their output, in the proportion provided for, in accordance with and subsequent to their undertaking. A producer whose output has, for example, already dropped by 20% during the intermediate period and who undertakes simply to maintain his new level of production from the date of that undertaking would not be consenting to make a comparable effort.

21 In that connection it should be noted that 'extensification' within the meaning of the Community rules consists in the reduction, for a period of at least five years, of the normal output of a holding and that the aid scheme established by those rules is thus aimed at limiting agricultural surpluses by promoting 'extensification'. The purpose of the rules is also achieved if a stock farmer, 20% of whose animals have, for example, been slaughtered during the intermediate period, undertakes to maintain the new level of output during the period covered by the undertaking. If he had not given the undertaking and consented to make such an effort, no doubt the producer would at least have sought to regain his normal level of output instead of maintaining it below the level of his capacities.

22 The Commission also claimed that an Italian producer whose output had been reduced during the intermediate period because of cases of foot-and-mouth disease in Italy in 1988 and 1989 could have benefited on that basis from a compensation scheme financed in part by the Community on the basis of Council Decision 77/97/EEC of 21 December 1976 on the financing by the Community of certain emergency measures in the field of animal health (OJ 1977 L 26, p. 78). It would accordingly be unreasonable if that producer could also, if need be, benefit, as a result of the same reduction in his output, from the 'extensification' aid scheme.

23 As the Advocate General stated in point 34 of his Opinion, that argument ignores the different purposes of the two aid schemes. Whilst the first is aimed at compensating for losses suffered by a producer as a result of an epizootic disease and at enabling him, if need be, to restock his herd in order to safeguard the continued operation of his holding and maintain his income, the objective of the second consists in encouraging producers, in exchange for aid, to reduce the normal output of their holding. Thus a producer benefiting from compensation under the first scheme who decides not to restock his entire herd and undertakes, for five years, to maintain the herd at 80% of its pre-epizootic level is in the same situation as a producer unaffected by the epizootic who undertakes, in exchange for 'extensification' aid, to sell 20% of his cattle and maintain the herd at its new level for the same period of time.

24 In view of all the above considerations, the reply to the national court must be that Article 1b(3)(c) of Regulation No 797/85, as amended, and Article 4(1) and (2) of Regulation No 4115/88 must be interpreted as not allowing a Member State, where there has been a drop in output during the intermediate period between the end of the reference period and the beginning of the period of the undertaking, to make the grant of aid for 'extensification' in any case conditional on output achieved during the intermediate period being reduced, during the period of the undertaking, by an amount corresponding to at least 20% of output during the reference period.

Costs

25 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Consiglio di Stato, by order of 21 March 1995, hereby rules:

Article 1b(3)(c) of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures, as amended by Council Regulation (EEC) No 1760/87 of 15 June 1987, and as both amended by Council Regulation (EEC) No 1094/88 of 25 April 1988, and Article 4(1) and (2) of Commission Regulation (EEC) No 4115/88 of 21 December 1988 laying down detailed rules for applying the aid scheme to promote the extensification of production must be interpreted as not allowing a Member State, where there has been a drop in output during the intermediate period between the end of the reference period and the beginning of the period of the undertaking, to make the grant of aid for 'extensification' in any case conditional on output achieved during the intermediate period being reduced, during the period of the undertaking, by an amount corresponding to at least 20% of output during the reference period.

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 9 January 1997.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Third Chamber