JUDGMENT OF THE COURT (Fifth Chamber)
14 September 1995 *

In Case C-49/94,

Ireland, represented by Michael A. Buckley, Chief State Solicitor, acting as Agent, with an address for service in Luxembourg at the Irish Embassy, 28 Rue d'Arlon,

applicant,

v

Commission of the European Communities, represented by Xavier Lewis, of its Legal Service, acting as Agent, assisted by John Handoll, Solicitor, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision 93/659/EC of 25 November 1993 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1990 of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section (OJ 1993 L 301, p. 13) is void in part,

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, P. Jann, J. C. Moitinho de Almeida, D. A. O. Edward and L. Sevón (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 1 June 1995, at which Ireland was represented by Richard Law Nesbitt, Senior Counsel, and the Commission by James Macdonald Flett and Klaus-Dieter Borchardt, of its Legal Service, assisted by John Handoll, Solicitor,

after hearing the Opinion of the Advocate General at the sitting on 29 June 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 7 February 1994 Ireland brought an action under Article 173 of the EC Treaty for a declaration that Commission Decision 93/659/EC of 25 November 1993 on the clearance of the accounts presented by the Member States in respect of expenditure for 1990 of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, is void in so far as it disallowed an amount of IRL 6 343 429 from Community financing.

2 The reasons for the disallowance of that amount are to be found in the summary reports on the results of checks in respect of the clearance of EAGGF accounts, Guarantee Section, for 1989 (Commission document VI/303/91 of 27 July 1992) and 1990 (Commission document VI/119/93 of 1 October 1993). The Commission there refers to inspections which revealed that, in the case of some beef which had been stored before export and for which export refunds had been applied for and paid in advance, the maximum duration of storage authorized by the Community rules had been exceeded. The documents required by the Irish authorities did not enable them to check whether the exporter fulfilled the pre-financing conditions; in particular, no export declaration in proper form had been lodged within the prescribed period, in accordance with Article 30 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1). The form used ought to have been the Single Administrative Document (SAD) referred to in Council Regulation (EEC) No 1900/85 of 8 July 1985 introducing Community export and import declaration forms (OJ 1985 L 179, p. 4). Finally, the physical inspections were insufficient.

3 In this case the Commission complains that Ireland did not comply with the Community rules on export refunds for beef and veal and, in particular, the provisions relating to the documents required from exporters in order for them to qualify for advance payment of export refunds.

4 It follows from Article 5 of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (OJ 1980 L 62, p. 5) that a refund may be paid in advance on products or goods placed under the customs warehousing or free zone procedure with a view to their export within a set time-limit.

5 Chapter 3 of Title 2 of Regulation No 3665/87 lays down the detailed rules for the application of Regulation No 565/80 and in particular the formalities necessary in the event that the exporter wishes to obtain advance payment of export refunds.

6 Article 25 of that regulation provides that by a payment declaration, the exporter must express his intention to export the products after storage and to obtain a refund. At the time of acceptance of the payment declaration, the products are placed under customs control until they leave the customs territory of the Community (Article 26). The period during which the products may remain under the customs warehousing procedure is to be six months from the date of acceptance of the payment declaration (Article 28(5)). That period was, however, extended to nine months for the 1989 year by Commission Regulation No 2675/88 of 29 August 1988 (OJ L 239, p. 20) and to seven months for the 1990 year by Commission Regulation No 2965/89 of 29 September 1989 (OJ L 281, p. 103). By the last day of that period the exporter must lodge an export declaration (Article 30). Within 60 days from the date on which the products are no longer subject to the customs warehousing procedure, they must leave the customs territory of the Community (Article 32).

7 Regulation No 3665/87 does not define what form the 'export declaration' referred to in Article 30 must take. However, account is to be taken of Article 3 of that regulation, which provides:

'1. The day of export means the date on which the customs authority accepts the export declaration in which it is stated that a refund will be applied for.

2. The date of acceptance of the export declaration shall determine:

(a) the rate of the refund where the refund is not fixed in advance;

(b) any adjustments to be made to the rate of the refund where it is so fixed.

3. Any other act having the same effect in law as the acceptance of the export declaration shall be deemed to be equivalent to such acceptance.

4. The day of export shall be used to establish the quantity, nature and characteristics of the product exported.

5. The document used for export to enable products to qualify for a refund must include all information necessary for the calculation of the amount of the refund, and in particular:

(a) a description of the products in accordance with the nomenclature used for refunds;

(b) the net mass of the products or, where applicable, the unit of measurement to be taken into account in calculating the refund; and,

(c) in so far as is necessary for calculating the refund, particulars of the composition of the products or the relevant reference.

If the document mentioned in this paragraph is the export declaration, this document must also include these references and the reference "refund code".

6. At the time of such acceptance, or of such equivalent act, the products shall be placed under customs control until they leave the customs territory of the Community.'

8 In the present case, the documents required by the Irish authorities were as follows:

(1) when the beef was stored and export refunds were applied for, two forms were completed:

— a 'C&E 977' form by which the meat was placed under customs warehousing control;

— an 'AP' form which constituted an application for advance payment of export refunds;

(2) when the owner of the beef decided to export it, he filled in a 'C&E 978' form; the meat then went from the customs warehousing regime to the export regime;

(3) a 'D&C' form was completed at the time when the meat was physically exported.

9 The applicant's first plea is that the requirements laid down in Article 30 of Regulation No 3665/87 were complied with. In contending that the Single Administrative Document (SAD) referred to in Regulation No 1900/85 must be used for the export declaration, the Commission is seeking to impose an unreasonable interpretation of Regulation No 3665/87 which is not in any way supported by its wording. Article 30 of that regulation does not define what the export declaration must be and Article 3(3) and (5) of that regulation suggests that a series of acts may be taken as acceptance of an export declaration. Finally, Article 6(1)(e) of Regulation No 1900/85 provides that nothing in the regulation is to affect the use of special forms to facilitate declarations in particular cases.

10 According to Ireland, when the customs authorities received form C&E 978, they had in their possession all the information necessary for checking that the conditions for application of the Community rules had been complied with, since they could refer to the previous document C&E 977. It was the combination of that documentation which constituted the export declaration.

11 The Commission considers, however, that the conditions laid down in Article 30 of Regulation No 3665/87 were not complied with, on the ground that the standard export document or a document having the same function and effect ought to have been used. The standard Community form is the Single Administrative Document (SAD) provided for by Regulation No 1900/85 and used in nearly all the other Member States.

12 Moreover, in form and effect the documents constituting, according to the applicant, the export declaration did not have that function. The C&E 977 form was described as a 'Register of CAP goods placed under Control prior to the Date of Export' and the C&E 978 form as a 'Notice of Loading of CAP products for Export'. The latter document did not provide for a date of acceptance. As for the 'Export Declaration and Control form for Goods placed under Customs Control

prior to Exportation' (D&C form), it could have validly served as the export declaration but it was lodged at the time of exit of the goods from the customs territory or shortly thereafter, that is to say well after expiry of the time limit laid down in Regulation No 3665/87 for deposit of an export declaration.

13 Finally, the Commission points out that the documentation purported to be an export declaration did not in fact fulfil the essential function of an export declaration, which should enable compliance with the pre-financing conditions to be verified and, more particularly, the fact that export took place within the 60-day period laid down in Article 4(1) of Regulation No 3665/87. In particular Form C&E 978 contained no information as to the destination of the goods and was not dated or stamped by customs.

14 As follows from Article 2 of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970 (I), p. 218), only refunds on exports to third countries, granted in accordance with the Community rules within the framework of the common organization of agricultural markets, are to be financed by the Guarantee Section of the EAGGF.

15 According to the provisions of Regulation No 3665/87, an exporter who wishes to obtain export refunds must lodge an export declaration and ensure that the products leave the customs territory within a certain period.

16 By Regulation No 1900/85, the Council introduced a Community export declaration form valid for all exports of goods from the customs territory of the Community. Since, first, that regulation allows special forms to be used in certain cases and, secondly, Regulation No 3665/87 contains no reference to that previous regulation but solely a description of the information that export declarations must contain, the question to be considered is whether the documents required by the

Irish authorities could constitute a proper export declaration for the purposes of Article 30 of Regulation No 3665/87.

17 Contrary to the applicant's submission, the documents used during the period in question could not constitute such an export declaration. None of them includes a date of acceptance, that is to say the date on which the customs authority accepts the export declaration in which it is stated that a refund will be applied for. Although some forms submitted to the Court did mention a 'date ex warehouse', there is nothing to indicate that that date was marked on them or even certified by the customs authorities when the export declaration was lodged. Ireland's first plea in law must therefore be dismissed.

18 Ireland relies on a second plea, to the effect that the Commission's objections relate to subsidiary administrative formalities so that there is no infringement of the Community rules.

19 Regulation No 729/79, cited above, requires the Member States to take the measures necessary not only to satisfy themselves that transactions financed by the EAGGF are actually carried out and are executed correctly (Article 8), but also to facilitate the supervision which the Commission may consider it necessary to undertake (Article 9).

20 Documents not having an acceptance date marked on them by the customs authorities do not enable the date on which the exporter lodged an export declaration to be ascertained with a degree of certainty that excludes all risk of error or fraud. The date of acceptance of the declaration is, moreover, indispensable in so far as it is taken as the reference date for determining the rate of refund applicable and for checking that the products are exported within the time-limit imposed by the regulation. It is thus an essential formality, and not a subsidiary formality as maintained by Ireland. This plea must therefore be rejected.

21 By its third plea, Ireland also claims that, even if it did fail to fulfil its obligation to carry out essential formalities in the application of Regulation No 3665/87, the Commission's disallowance of the expenditure in question is excessive and disproportionate.

22 In view of the essential nature of the formalities which were not complied with and of the fact that it was not possible to check that the time-limit within which the products were to be exported was observed, and in view, therefore, of the probability of losses, or even fraud, to the detriment of the Community budget, the amount disallowed by the Commission, which was limited to 2% of the expenditure involved, cannot be regarded as excessive and disproportionate. This plea must therefore also be dismissed.

23 By its final plea in law Ireland contends that the Commission's interpretation of the regulation constitutes a breach of the principles of protection of legitimate expectations and of legal certainty.

24 It does not appear from an examination of the various Community regulations or from their interpretation by the Commission that there has been a breach of those principles. The final plea must therefore be dismissed.

Costs

25 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since the Commission applied for costs against Ireland, and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the application.

2. Orders Ireland to pay the costs.

Gulmann Jann Moitinho de Almeida

Edward Sevón

Delivered in open court in Luxembourg on 14 September 1995.

R. Grass
Registrar

C. Gulmann
President of the Fifth Chamber