JUDGMENT OF THE COURT (Sixth Chamber)
1 October 1998 *

In Case C-27/94,

Kingdom of the Netherlands, represented by J. W. de Zwaan and J. S. van den Oosterkamp, Assistant Legal Advisers at the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C. M. Spoo,

applicant,

v

Commission of the European Communities, represented by T. van Rijn, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the partial annulment of 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),

* Language of the case: Dutch.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen, G. F. Mancini (Rapporteur), P. J. G. Kapteyn and G. Hirsch, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 19 May 1998,

gives the following

Judgment

1 By an order lodged with the Registry of the Court on 21 January 1994, the Kingdom of the Netherlands sought, under the first paragraph of Article 173 of the EC Treaty, the partial annulment of 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, hereinafter the 'contested decision'), inasmuch as it disallowed payment of the sum of HFL 3 317 344.26 (hereinafter 'the disputed sum') from Community funds.

Community legislation

2 Under Article 2(1) 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), refunds on exports to third countries are to be financed by the Guarantee Section of the EAGGF subject to their being granted in accordance with the Community rules within the framework of the common organisation of agricultural markets.

3 Article 8(1) of that regulation requires Member States to satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly, and to prevent and deal with irregularities. Under Article 8(2), the financial consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States are not to be borne by the Community.

4 Article 3 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) 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.

...

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.'

5 Article 4(1) of Regulation No 3665/87 provides that, without prejudice to the provisions of Articles 5 and 16, the refund is to be paid only upon proof being furnished that the products for which the export declaration was accepted have, within 60 days from the date of such acceptance of the export declaration, left the customs territory of the Community in the unaltered state.

6 Article 47(1) of Regulation No 3665/87 provides that the refund is to be paid only on written application by the exporter by the Member State in whose territory the export declaration was accepted.

7 The second paragraph of Article 47(3) of that regulation provides:

'The supporting documents to be submitted with the request must include:

(a) where a control copy has been issued to furnish proof that the products have left the customs territory of the Community:

— the transport document, and

— a document which shows that the product has been presented at a customs office in a non-member country or one or more of the documents referred to in Article 18 (1), (2) and (4);

(b) where Articles 34, 42 or 38 are applied: confirmation by the customs office responsible for checking the destination in question that the conditions for endorsement of the control copy concerned by the said office have been fulfilled.'

The dispute

8 In 1991 the Commission carried out audits of the body appointed by the Netherlands Minister for Agriculture, Nature Management and Fisheries to make payments, namely the Hoofproduktschap voor Akkerbouwprodukten (Central Board for Agricultural Products).

9 In its Report No VI/002020 of 14 January 1992, the Commission noted that, in relation to the export of 18 250 230 kg of barley to Russia (file B 867163), the export declaration was accepted on 27 November 1989 by the Netherlands customs authorities in Terneuzen even though the barley had left the territory of the Community on board the *Kapitan Stankov* on 25 November 1989. The Commission contends that the delay led to uncertainty as to whether the goods had been declared for export within the prescribed time-limit and whether the Netherlands customs authorities had been in a position to inspect them.

10 In response to a letter of 14 January 1992 in which the Commission requested further information to dispel that uncertainty, the Netherlands authorities replied, by letters of 25 June and 17 July 1992, that the Terneuzen customs office had been closed during the weekend of 25 and 26 November 1989, but that the declaration

had been forwarded to the customs department responsible for the clearance of goods. The authorities also stated that the *Kapitan Stankov* was moored at Terneuzen on 25 November 1989 and that customs officers had taken samples which were *subsequently* analysed by official experts; the declaration had been dealt with on the next working day, which was 27 November 1989.

11 The Commission took the view that that reply was unsupported by any document or other evidence and, at a bilateral meeting on 3 November 1992, requested the Netherlands authorities to prove that the export declaration had indeed been presented on 25 November 1989 to the customs office responsible for clearance and that the samples had in fact been taken.

12 By Decision 92/2645/EC of 6 November 1992, the Commission set 15 December 1992 as the deadline for submission by the Member States of supplementary information to clear the accounts for the 1990 financial year.

13 In response to the Commission's request for further information, the Netherlands authorities reiterated, in a letter dated 14 December 1992, the points they had made as to the movements of the *Kapitan Stankov* and undertook to submit, as evidence, an extract from the register of the Terneuzen Harbour and Locks Department. In addition, they referred to the manuscript notes made by the competent customs official on the customs department form in relation to the clearance of the goods in question.

14 However, those documents were only sent to the Commission between 19 and 22 July 1993, in other words, after the period fixed by the Commission in its decision of 6 November 1992 had expired.

15 In its Summary Report No VI/119/93 of 1 October 1993, the Commission noted that the export declaration in respect of 18 250 230 kg of barley bound for Russia had been accepted by the Terneuzen customs authorities on 27 November 1989 despite the fact that the barley had left Community territory on 25 November 1989. Moreover, it found that the Lloyd's register of ship movements showed that the *Kapitan Stankov* had not called at Terneuzen but had left Community territory straight away after its departure from Ghent.

16 On the basis of that report, the Commission adopted the contested decision on 25 November 1993.

The action

17 The Netherlands Government bases its action against the contested decision on two pleas in law.

The first plea in law

18 In its first plea in law, the Netherlands Government alleges that the contested decision infringes the combined provisions of Article 8(2) of Regulation No 729/70 and Articles 3, 4 and 47 of Regulation No 3665/87.

19 It claims that the national authorities fulfilled their obligations under Article 8(1) of Regulation No 729/70 by ensuring that the refund was granted in compliance with all the conditions laid down by the Community legislation and, in particular, with the conditions set out in Articles 3, 4 and 47 of Regulation No 3665/87.

20 The Commission denies applying Article 8(2) of Regulation No 729/70 when it adopted the contested decision. It contends that the real questions raised by this case are, first, whether the *Kapitan Stankov* was in Terneuzen on 25 November 1989, whether inspections were carried out by the Netherlands authorities and, if so, what inspections, and second, whether the Netherlands authorities produced specific evidence to that effect in good time, in other words within the period prescribed by the Commission in its decision of 6 November 1992 which expired on 15 December 1992.

21 The Commission further contends that, in any event, and even if Article 8(2) of Regulation No 729/70 applies, the Netherlands authorities were negligent in that they took 18 months to submit the documents which the Commission had on several occasions requested them to produce.

22 On this point, it must first of all be borne in mind that, according to the principles governing the procedure for clearing EAGGF accounts as laid down in the case-law of the Court, only refunds granted 'in accordance with the Community rules' within the framework of the common organisation of agricultural markets are financed by the EAGGF (Case 347/85 *United Kingdom* v *Commission* [1988] ECR 1749, paragraph 11).

23 Under Article 2 of Council Directive 81/177/EEC of 24 February 1981 on the harmonisation of procedures for the export of Community goods (OJ 1981 L 83, p. 40), the export of goods from the customs territory of the Community is conditional upon the lodging of an export declaration at a customs office.

24 Moreover, under Article 3(5) of Regulation No 3665/87, the document used 'must include all information necessary for the calculation of the amount of the refund'. Under Article 3(6), at the time of acceptance of the export declaration, the products must be placed under customs control until they leave the customs territory of the Community.

25 The overall effect of those provisions is that an export declaration must be made in writing, *inter alia*, in order for it to be possible to check whether the information given by the exporter corresponds to the goods presented for export, and that it must be submitted before the goods have left customs territory.

26 Secondly, when the Commission refuses to charge certain expenditure to the EAGGF on the ground that it was incurred as a result of breaches of Community rules attributable to a Member State, it is for that State to show that the conditions for obtaining the financing disallowed are fulfilled (see, in particular, *United Kingdom* v *Commission*, cited above, paragraph 14).

27 That rule is equally applicable in a case such as this where the Commission considers, on the basis of inspections carried out by its staff, that the Member State in question did not carry out the necessary inspections before the goods left customs territory (see also, on this point, Case C-198/94 *Italy* v *Commission* [1996] ECR I-2797, paragraph 36).

28 Furthermore, Article 8(1) of Regulation No 729/70 imposes on Member States the general obligation to take the measures necessary to satisfy themselves that the transactions financed by the EAGGF are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence (Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 17).

29 In this case, the Netherlands authorities were not able to show, at least before the expiry of the period prescribed in its decision of 6 November 1992, that the Commission was wrong in its findings.

30 As the Advocate General rightly observes at points 25 to 27 of his Opinion, the letters from the Netherlands authorities of 25 June and 17 July 1992 merely throw additional light on the course of events during the weekend of 25 and 26 November 1989 and cannot therefore be deemed to constitute adequate evidence. Nor does the letter of 14 December 1992 contain any fresh evidence to support the assertions of the Netherlands authorities.

31 Accordingly, the Commission's findings in relation to the submission of the export declaration and inspection of the goods at issue must be considered to give rise to serious doubts as to the accuracy of that declaration and the inspections carried out by the Netherlands customs authorities at Terneuzen.

32 In the light of those considerations, the plea alleging infringement of the combined provisions of Article 8(2) of Regulation No 729/70 and Articles 3, 4 and 47 of Regulation No 3665/87 must be rejected.

The second plea in law

33 In its second plea in law, the Netherlands Government argues that the contested decision infringes Article 190 of the EC Treaty on the ground that the reasons stated are inadequate.

34 The Commission, in contrast, contends that the case-file clearly shows that there was ample correspondence between its departments and the Netherlands authorities in which the Commission made it clear from the outset that it required evidence of the transaction at issue. The Netherlands Government was therefore aware of the reasons for the contested decision.

35 In that connection, the Court has consistently held that the extent of the duty to state the reasons on which a decision is based, laid down in Article 190, depends on the nature of the act in question and on the context in which it was adopted (Case C-54/95 *Germany* v *Commission* [1993] ECR I-3399, paragraph 10).

36 In the particular context of the preparation of decisions relating to the clearance of accounts, the statement of reasons for a decision must be regarded as sufficient if the Member State to which the decision was addressed was closely involved in the process by which the decision came about and was aware of the reasons for which the Commission took the view that it must not charge the sum in dispute to the EAGGF (see Case C-22/89 *Netherlands* v *Commission* [1990] ECR I-4799, paragraph 18).

37 In this case, as the Commission has pointed out, the case-file shows that the Netherlands Government was involved in the process by which the contested decision came about and that the Commission's uncertainty as to the circumstances surrounding the export of the barley in question was brought to the attention of the Netherlands authorities on several occasions.

38 In particular, the Commission indicated in its summary report the reasons which led to its refusal to clear the sum in dispute. Furthermore, by letter of 14 January 1992, it requested the Netherlands authorities to provide further information to dispel its uncertainty as to whether the goods had been declared for export within the prescribed period and whether customs had been in a position to inspect those goods.

39 In those circumstances, the statement of reasons for the contested decision must be considered to be sufficient.

40 Since the second plea in law cannot be upheld, the action must be dismissed in its entirety.

Costs

41 Pursuant to Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the Kingdom of the Netherlands has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1) Dismisses the action;

2) Orders the Kingdom of the Netherlands to pay the costs.

Ragnemalm Schintgen Mancini

Kapteyn Hirsch

Delivered in open court in Luxembourg on 1 October 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber