JUDGMENT OF THE COURT (First Chamber)
14 October 2004 *

In Case C-173/02,

APPLICATION for annulment under Article 230 EC,

brought on 13 May 2002,

Kingdom of Spain, represented by S. Ortiz Vaamonde, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by J.L. Buendía Sierra, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas and S. von Bahr, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 22 January 2004,

gives the following

Judgment

1 By its application the Kingdom of Spain asks the Court to annul Commission Decision 2002/411/EC of 12 March 2002 on the State aid implemented by Spain for producers of cows' milk considered to be priority producers (OJ 2002 L 144, p. 49) ('the contested decision').

Legal background

2 Under Article 36 EC:

'The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council ... .'

3 Article 23 of Council Regulation (EC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176) provides:

'Save as otherwise provided in this Regulation, Articles 92 to 94 of the Treaty [now Articles 87 to 89 EC] shall apply to the production of and trade in the products listed in Article 1.'

4 Article 5 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1) provides:

'1. Within the quantities referred to in Article 3, the Member State may replenish the national reserve following an across-the-board reduction in all the individual reference quantities in order to grant additional or specific quantities to producers determined in accordance with objective criteria agreed with the Commission.

Without prejudice to Article 6(1), reference quantities available to producers who have not marketed milk or other milk products for one of the twelve-month periods shall be allocated to the national reserve and may be reallocated in accordance with the first subparagraph. Where the producer resumes production of milk or other milk products within a period to be determined by the Member State, he shall be granted a reference quantity in accordance with Article 4(1) no later than 1 April following the date of his application.'

5 The penultimate recital in the preamble to Regulation No 3950/92 states that in order to continue restructuring milk production and improving the environment, Member States should, amongst other things, be authorised to continue implementing national restructuring programmes and to organise some degree of mobility for reference quantities within a given geographical area, on the basis of objective criteria.

6 To that end, Article 8 of Regulation No 3950/92 provides:

'With a view to completing restructuring of milk production at national, regional or collection area level, or to environmental improvement, Member States may take one or more of the following actions in accordance with detailed rules which they shall lay down taking account of the legitimate interests of the parties:

— grant compensation in one or more annual instalments to producers who undertake to abandon definitively all or part of their milk production and place the reference quantities thus released in the national reserve,

— determine on the basis of objective criteria the conditions under which producers may obtain, in return for payment, at the beginning of a 12-month period, the reallocation by the competent authority or by the body designated by that authority, of reference quantities released definitively at the end of the preceding twelve-month period by other producers in return for compensation in one or more annual instalments equal to the abovementioned payment,

...'.

Factual background, the contested decision and the procedure before the Court

7 In the marketing year 1998/1999 the competent authorities in the Autonomous Community of the Principality of Asturias (Spain) implemented acquisition aid for milk quotas ('the aid at issue'). That aid was intended to facilitate the acquisition of reference quantities by the milk producers regarded, by virtue of Royal Decree No 1888/91 of 30 December 1991 (BOE No 2, of 2 January 1992, p. 84), as priority producers. It consisted of an interest-rate rebate on loans contracted in order to finance such an acquisition.

8 Following a complaint concerning that aid, the Commission, on 12 March 2002, adopted the contested decision prohibiting that aid on the ground that it was incompatible with the common market. According to the contested decision the aid at issue was not authorised by the provisions of Regulation No 3950/92 and Article 87(2) and (3) EC was not applicable.

9 In its application the Kingdom of Spain claims that the Court should annul the contested decision and order the Commission to pay the costs.

10 The Commission contends that the Court should dismiss the action as unfounded and order the Kingdom of Spain to pay the costs.

The application

11 In support of its application the Spanish Government puts forward, essentially, two pleas.

The first plea

Arguments of the parties

12 By its first plea, the Spanish Government argues that the contested decision is contrary to Regulation No 3950/92, in that it prohibits aid which is consistent with the objectives of that regulation and the fundamental rules and principles of Community law.

13 In order to assess whether the aid is in accordance with Regulation No 3950/92 it is not necessary to show that it is expressly authorised by that regulation. It is sufficient to show that it is consistent with the objectives underpinning that regulation and that it does not infringe any other rules or fundamental principle of Community law (Case 177/78 *Pigs and Bacon Commission* v *McCarren* [1979] ECR 2161, paragraph 14; Case 216/84 *Commission* v *France* [1988] ECR 793, paragraphs 18 and 19; Case 90/86 *Zoni* [1988] ECR 4285, paragraph 26; and Case C-86/89 *Italy* v *Commission* [1990] ECR I-3891, paragraph 19). The aid at issue does, in fact, satisfy those conditions.

14 In any event, the Member States have discretion to supplement the options referred to in Article 8 of that regulation.

15 The Commission replies that it does not see anything in the case-law of the Court capable of supporting the Spanish Government's argument that the aid referred to by the contested decision is compatible with Regulation No 3950/92 even if it is not expressly provided for by that regulation.

Findings of the Court

16 As stated in *Commission* v *France*, in paragraph 18, milk products are subject to a common organisation of the market.

17 As regards the aid in that sector, it is clear from Article 23 of Regulation No 804/68, read in combination with Article 36 EC, that Articles 87 EC, 88 EC and 89 EC are applicable to the production of and trade in milk products only to the extent that such application is provided for by the regulation which lays down the common organisation of the market.

18 In that regard, Regulation No 3950/92 provides, inter alia, in Articles 5 and 8, that the Member States may, under certain conditions, grant aid to producers of milk products.

19 The Court has consistently held that once the Community has established a common market organisation in a particular sector, it is for the Community to seek solutions to problems arising in the context of the common agricultural policy. Member States must therefore refrain from taking any unilateral measure in that area, even if that measure is likely to support the common policy of the Community (*Commission* v *France*, paragraph 18, *Italy* v *Commission*, paragraph 19, and *Zoni*, paragraph 26).

20 In the context of the common organisation of the market for milk products, only State aid expressly authorised by Regulation No 3950/92, in particular Articles 5 and 8, is lawful.

21 In that regard, the argument put forward by the Spanish Government that it is clear from the judgment in Case C-313/99 *Mulligan and Others* [2002] ECR I-5719 that it is unnecessary for an aid to be expressly authorised by Regulation No 3950/92 cannot be accepted. As the Advocate General rightly states in paragraph 40 of his Opinion, in that case the Court held that the Irish scheme at issue was legitimate only because it fell within the scope of the measures authorised by Article 7(1) of Regulation No 3950/92 (*Mulligan*, paragraph 29).

22 In this case, the aid at issue, which consists of an interest-rate rebate on loans contracted to acquire reference quantities from other producers is not expressly authorised either by Article 5 or by Article 8 of Regulation No 3950/92.

23 The reference quantities for the purchase of which the aid was paid do not come from the national reserve, were not released following an across-the-board reduction in all the individual reference quantities and do not correspond to the reference quantities available to producers who have not marketed milk or other milk products during a 12-month period, within the meaning of Article 5 of Regulation No 3950/92.

24 Furthermore, since the aid at issue is an interest-rate rebate, it does not constitute compensation within the meaning of the first indent of Article 8 of Regulation No 3950/92.

25 Finally, it does not fall within the scope of the second indent of Article 8, since the reference quantities for the purchase of which the compensation was paid do not come from the national reserve.

26 Moreover, as the Advocate General rightly pointed out in paragraph 44 of his Opinion, the reference to 'one or more of the following actions' in Article 8 of Regulation No 3950/92 enables the Member States to adopt singly or in combination any or all of the measures listed, but does not authorise them to provide for new types of actions in that field. Similarly, the 'detailed rules' which Member States may enact must serve to implement one or more of those measures.

27 Consequently, the first plea must be dismissed.

The second plea

Arguments of the parties

28 By its second plea, the Spanish Government submits that the contested decision is contrary to Regulation No 3950/92, in that it prohibits aid which does not have the effect of distorting the rules governing the functioning of the market for milk and milk products.

29 According to the Spanish Government, an aid which does not distort the rules governing the functioning of the milk market is compatible with the common market and, therefore, cannot be prohibited.

30 The Commission maintains, if the Court holds that Regulation No 3950/92 does not prevent restructuring measures other than those for which it expressly provides to be taken, that the aid in question is capable of provoking significant distortions on the market and is therefore incompatible with the common rules of the market.

Findings of the Court

31 As stated in paragraph 20 of the present judgment, only aid expressly authorised by Regulation No 3950/92 is lawful. That lawfulness does not depend on the possible effects that that aid may have on the functioning of the market for milk and milk products. Therefore, if such an aid is not expressly authorised by that regulation it is unlawful, even if it is not such as to distort the functioning of that market.

32 In this case, the aid at issue was not expressly authorised by Regulation No 3950/92.

33 It follows that the second plea must also be rejected.

34 It follows from all those considerations that the application must be dismissed.

Costs

35 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 in the successful party's pleadings. Since the Kingdom of Spain has been unsuccessful and the Commission has applied for costs, the Kingdom of Spain must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. Dismisses the application;

2. Orders the Kingdom of Spain to pay the costs.

Signatures.