JUDGMENT OF THE COURT (First Chamber)
7 July 1988 *

In Case 55/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court), Frankfurt am Main (Federal Republic of Germany), for a preliminary ruling in the proceedings pending before that court between

Alexander Moksel Import und Export GmbH & Co. Handels-KG, Buchloe,

and

Bundesanstalt für landwirtschaftliche Marktordnung, Frankfurt am Main,

on the interpretation of Council Regulation No 885/68 of 28 June 1968 laying down general rules for granting export refunds on beef and veal and criteria for fixing the amount of such refunds (Official Journal, English Special Edition 1968 (I), p. 237), the interpretation and validity of Commission Regulation No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector (Official Journal 1980, L 241, p. 5) and the validity of Commission Regulation No 387/84 of 15 February 1984 temporarily suspending the advance fixing of export refunds for certain beef and veal sector products (Official Journal 1984, L 46, p. 39),

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, R. Joliet and F. Schockweiler, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

* Language of the Case: German.

after considering the observations submitted on behalf of

Alexander Moksel Import und Export GmbH & Co. Handels-KG, the plaintiff in the main proceedings, by V. Schiller, Rechtsanwalt, Cologne,

the Commission of the European Communities, by its Legal Adviser D. Booss,

having regard to the Report for the Hearing and further to the hearing on 9 March 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 1 June 1988,

gives the following

Judgment

1 By an order of 22 January 1987, which was received at the Court on 23 February 1987, the Verwaltungsgericht, Frankfurt am Main, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty several questions on the interpretation of Council Regulation No 885/68 of 28 June 1968 laying down general rules for granting export refunds on beef and veal and criteria for fixing the amount of such refunds (Official Journal, English Special Edition 1968 (I), p. 237), the interpretation and validity of Commission Regulation No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import licences in the beef and veal sector (Official Journal 1980, L 241, p. 5), and the validity of Commission Regulation No 387/84 of 15 February 1984 temporarily suspending the advance fixing of export refunds for certain beef and veal sector products (Official Journal 1984, L 46, p. 39).

2 Those questions were raised in the context of proceedings in which Alexander Moksel Import und Export GmbH & Co. Handels-KG (hereinafter referred to as 'Moksel'), the plaintiff in the main proceedings, seeks the annulment of a decision by which the Bundesanstalt für landwirtschaftliche Marktordnung, the defendant

in the main proceedings, refused to issue to it licences with advance fixing of export refunds for consignments of beef.

3 The Verwaltungsgericht Frankfurt am Main, before which the proceedings were brought, decided to refer the following preliminary questions to the Court:

'(1) Is it correct to reject applications for the advance fixing of refunds pursuant to Article 5 (3) of Regulation (EEC) No 885/68 of the Council of 28 June 1968 laying down general rules for granting export refunds on beef and veal and criteria for fixing the amount of such refunds, as amended by Council Regulation (EEC) No 1504/76 of 21 June 1976, when those applications have been lodged prior to the period of suspension but necessitate a decision during that period?

If Question 1 is answered in the affirmative:

(2) Is the term "Werktag" in Article 8a (2) of Commission Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector, as amended by Commission Regulation (EEC) No 2798/81, to be construed as meaning the same as "Arbeitstag" as used in Commission Regulation (EEC) No 2378/80 of 4 September 1980 on additional special detailed rules governing the issue of export licences in the beef and veal sector, and as defined by Article 2 (2) of Regulation No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits?

If Question 2 is answered in the affirmative:

(3) (a) Does the statement of reasons in the preamble to Commission Regulation (EEC) No 387/84 of 15 February 1984 temporarily suspending the advance fixing of export refunds for certain beef and veal sector products satisfy the requirements of Article 190 of the EEC Treaty?

If Question 3 (a) is answered in the affirmative:

(b) Were the conditions laid down in Article 5 (4) of Regulation No 885/68 as amended by Regulation No 1504/76 satisfied, thus enabling Regulation No 387/84 to be adopted?

If Question 1, 2 or 3 is answered in the negative:

(4) Does Article 5 (3) of Regulation No 885/68, as amended by Regulation No 1504/76, permit an export licence with a refund fixed in advance to be issued in respect of a period in the past — that is to say, retroactively — if it is found that the refusal to issue the licence was unlawful?'

4 Reference is made to the Report for the Hearing for an account of the facts of the case, the applicable legislation and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the Court's reasoning.

First question (treatment of applications for licences with advance fixing lodged before a period of suspension of advance fixing but falling to be decided during that period)

5 In its first question the Verwaltungsgericht wishes to know whether applications for advance fixing of export refunds submitted before a period of suspension of advance fixing but on which a decision is to be taken during that period must be rejected.

6 The Verwaltungsgericht points out that by Article 8a (2) of Regulation No 2377/80, as amended by Regulation No 2798/81 of 28 September 1981 (Official Journal 1981, L 275, p. 24), the Commission instituted a general waiting period for the issue of licences with advance fixing. Under that provision, 'for products

falling within subheading 02.01 A II of the Common Customs Tariff, the export licence with advance fixing of the refund, . . . shall be issued on the fifth working day following the day on wich the application is lodged, unless special measures are taken during that period.'

7 If a measure suspending fixing such as that contained in Commission Regulation No 387/84 constituted a special measure within the meaning of the provision introducing a general waiting period, it would follow that applications for licences with advance fixing submitted before a period of suspension of advance fixing but on which a decision is to be taken during that period must be rejected. Such an interpretation was adopted by the Court in the context of another common organization of the market in which regulations similar to those in issue in this case were in force (judgment of 27 October 1983 in Case 276/82 *De Beste Boter* [1983] ECR 3331).

8 The Verwaltungsgericht points out, however, that in the aforementioned judgment the Court's reasoning referred solely to the purpose of the suspension of advance fixing and its effectiveness. The Court did not consider whether the provision introducing a general waiting period was valid.

9 The Verwaltungsgericht takes the view that Article 8a (2) of Commission Regulation No 2377/80, which introduces a general waiting period, is invalid because it is contrary to the second subparagraph of Article 5 (4) of Council Regulation No 885/68, as amended by Regulation No 1504/76 of 21 June 1976 (Official Journal 1976, L 168, p. 7). Under the latter provision, where examination of the market situation shows that there are difficulties due to the application of provisions concerning the advance fixing of the refund, or that such difficulties may occur, the Commission may, in cases of extreme urgency, decide to suspend advance fixing for a maximum of three working days. Article 8a (2) of Commission Regulation No 2377/80 infringes this provision on the ground *inter alia* that it introduces a generally applicable waiting period whereas the abovementioned provision empowers the Commission to suspend advance fixing only in particular cases.

10 The national court considers that if the provision introducing a general waiting period is invalid, the question whether the applications for licences in issue could be accepted must be assessed solely on the basis of the third subparagraph of Article 5 (4) of Council Regulation No 885/68. Acording to the clear wording of that provision, only applications for licences with advance fixing submitted during a period of suspension of advance fixing are to be rejected. As the applications in question were lodged before the beginning of the period of suspension, Moksel was entitled to the issue of the licences applied for.

11 It should be pointed out that Article 8a (2) of Commission Regulation No 2377/88, which introduced a general waiting period, is directly based on Article 15 (2) of Council Regulation No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187), as amended by Regulation No 425/77 of 14 February 1977 (Official Journal 1977, L 61, p. 1), which empowers the Commission to set a waiting period for the issue of certificates. The validity of the provision introducing a general waiting period cannot therefore be assessed on the basis of the second subparagraph of Article 5 (4) of Council Regulation No 885/68, on which it is not based, and which deals with the conditions under which the Commission may suspend advance fixing.

12 An examination of the case has disclosed no other factor of such a kind as to warrant an assessment other than that made by the Court in its judgment of 27 October 1983 (*De Beste Boter*, cited above).

13 The reply to the first question must therefore be that applications for advance fixing of export refunds pursuant to Article 5 (3) of Council Regulation No 885/68 submitted before a period of suspension of advance fixing but on which a decision is to be taken during that period must be rejected.

Second question (interpretation of the term 'Werktag')

14 In its second question, the Verwaltungsgericht asks whether the term 'Werktag' in the German version of Article 8a (2) of Commission Regulation No 2377/80 must be interpreted as being synonymous with the term 'Arbeitstag' in the German version of Article 2 (2) of Council Regulation No 1182/71 of 3 June 1971 deter-

mining the rules applicable to periods, dates and time-limits (Official Journal, English Special Edition 1971 (II), p. 354), that is to say as excluding Saturdays. It needs a clarification of this point in order to determine whether the day on which the applications in question were to be decided (the fifth working day following the day on which the applications were lodged) did in fact fall within the period during which advance fixing was suspended.

15 As the Court held in its judgment of 12 November 1969 in Case 26/69 (*Stauder* v *Ulm* [1969] ECR 419), 'the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all . . . languages'.

16 It is apparent from a comparative examination of the different language versions of Article 8a (2) of Commission Regulation No 2377/80 and Article 2 (2) of Council Regulation No 1182/71 that most of the versions use in these two provisions a single term corresponding to that of 'Arbeitstag', which appears in Article 2 (2) of Regulation No 1182/71 and excludes Saturdays.

17 Moreover, the objective of the introduction of a general waiting period is 'to enable the Commission to assess the market situation and, if necessary, to take appropriate measures relating to the application in question, which may even involve rejection of such applications' (first recital in the preamble to Commission Regulation No 2378/80 of 4 September 1980 on additional special detailed rules governing the issue of export licences in the beef and veal sector, Official Journal 1980, L 241, p. 19, which already contained the provision introducing a general waiting period). Saturday is a day on which economic activity is reduced and which does not therefore lend itself to market observation.

18 The need for uniform application of Community law and the achievement of the objective pursued by the provision introducing a general waiting period therefore require the term 'Werktag' in that provision to be interpreted as excluding Saturdays.

19 Consequently, the reply to the second question must be that the term 'Werktag' in the German version of Article 8a (2) of Commission Regulation No 2377/80 must be interpreted as being synonymous with the term 'Arbeitstag' in the German version of Article 2 (2) of Council Regulation No 1182/71, that is to say as excluding Saturdays.

Third question (validity of Commission Regulation No 387/84 suspending advance fixing)

20 In its third question, the Verwaltungsgericht essentially asks whether there is an adequate statement of reasons for Commission Regulation No 387/84 suspending advance fixing and, if so, whether the conditions laid down in Article 5 (4) of Council Regulation No 885/68 for the valid adoption by the Commission of Regulation No 387/84 were met.

21 The national court considers that the statement of the reasons on which Regulation No 387/84 is based is inadequate. It points out that under Article 5 (4) of Council Regulation No 885/68, on which Commission Regulation No 387/84 is based, a decision to suspend advance fixing can be taken only 'where examination of the market situation shows that there are difficulties due to the application of the provisions concerning the advance fixing of the refund, or that such difficulties may occur.' The Commission was therefore required to prove, by means of statistics if necessary, that the market was experiencing difficulties or was likely to do so.

22 It should be pointed out that the preamble to Regulation No 387/84 states as follows: 'whereas the market for beef is characterized by an uncertainty as regards the price; whereas the reduction in refunds for fresh and frozen beef from 11 February 1984 could lead to speculative advance fixing of the refunds; whereas it is necessary to suspend temporarily the advance fixing of refunds.'

23 According to the established case-law of the Court, affirmed in particular by the judgment of 22 January 1986 in Case 250/84 (*Eridania* v *Cassa Conguaglio Zucchero* [1986] ECR 117), 'the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its power of review. ... It is clear from that case-law (...) that the statement of reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part.'

24 Regulation No 387/84 satisfies these requirements. The preamble to that regulation sets out clearly the nature of the difficulties threatening the market in question, namely the submission of applications for advance fixing for speculative purposes, and the cause of these difficulties, which lies in a reduction of export refunds. These indications are sufficient to inform the traders concerned of the rationale of the legislation in question and to enable the Court to exercise its power of review.

25 The Verwaltungsgericht further asks whether the conditions laid down in Article 5 (4) of Council Regulation No 885/68 for the adoption by the Commission of a regulation such as the one whose validity is in question were met in this case. These conditions are the existence of a market situation in which there are, or are likely to be, difficulties connected with advance fixing and the existence of a case of extreme urgency.

26 The Commission stated, in reply to a question asked by the Court, that the total tonnage covered by applications for licences with advance fixing submitted during the period from 10 to 13 February 1984 was considerably greater (17 177 tonnes, including 15 880 tonnes on 10 February 1984 alone) than the tonnage covered by applications lodged during the preceding equivalent periods (between 1 000 and 2 500 tonnes on average).

27 It appears from these figures that on the date of adoption of Regulation No 387/84, 15 February 1984, the situation on the beef market was in fact one of difficulties due to the application of the provisions concerning the advance fixing of refunds.

28 In order to determine whether there was a case of extreme urgency within the meaning of the second subparagraph of Article 5 (4) of Council Regulation No 885/68 which justified the failure to consult the Management Committee, it is necessary to consider whether a regulation adopted in accordance with the Management Committee procedure could have taken effect in time to palliate the difficulties experienced by the market.

29 The Commission stated in this regard that in order to be able to reject the abnormally high number of applications for advance fixing lodged during the period from 10 to 13 February 1984 it had to suspend advance fixing on 17 February 1984, taking into account the waiting period of five working days before the issue of licences. It explained that a regulation adopted according to the Management Committee procedure would have been published in the Official Journal on 17 February at the earliest. If that regulation had suspended advance fixing as from the date of publication itself, as would have been necessary, it would have been open to criticism as having retroactive effect. However, Regulation No 387/84, which the Commission adopted on 15 February in accordance with the procedure in cases of extreme urgency was published in the Official Journal on 16 February and suspended advance fixing with effect from 17 February without being open to criticism as having retroactive effect.

30 It must be held in the light of these explanations that the Commission was entitled to adopt Regulation No 387/84 without consulting the Management Committee.

31 The answer to the third question must therefore be that consideration of the case has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 387/84.

Fourth question (possibility of retroactively issuing licences with advance fixing)

32 The fourth question is asked in the event that the reply to one of the preceding questions should indicate that Moksel was entitled to the issue of the licences in question. The national court asks whether in that case those licences may be issued retroactively.

33 In view of the replies given to the preceding question, it is not necessary to reply to the fourth question.

Costs

34 The costs incurred by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of 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 (First Chamber),

in answer to the question referred to it by the Verwaltungsgericht Frankfurt am Main by order of 22 January 1987, hereby rules:

(1) Applications for advance fixing of export refunds pursuant to Article 5 (3) of Regulation No 885/68 of the Council submitted before a period of suspension of advance fixing but on which a decision is to be taken during that period must be rejected.

(2) The term 'Werktag' in the German version of Article 8a (2) of Commission Regulation No 2377/80 must be interpreted as being synonymous with the term 'Arbeitstag' in the German version of Article 2 (2) of Regulation No 1182/71 of the Council, that is to say as excluding Saturdays.

(3) Consideration of the case has disclosed no factor of such a kind as to affect the validity of Commission Regulation No 387/84.

Bosco Joliet Schockweiler

Delivered in open court in Luxembourg on 7 July 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the First Chamber