JUDGMENT OF THE COURT
2 JULY 1964[1]

Rhenania, Schiffahrts- und Speditions-Gesellschaft mbH and Others v Commission of the European Economic Community[2]

Case 103/63

In Case 103/63

RHENANIA, SCHIFFAHRTS- UND SPEDITIONS-GESELLSCHAFT MBH, Mannheim, represented by its managers, Messrs Freimuth, Scharlach and Hans Voight,

RHENUS, GESELLSCHAFT FÜR SCHIFFAHRT, SPEDITION UND LAGEREI MBH, Frankfurt on Main, Hafenstraße 1, represented by its managers, Messrs Wilhelm Kirchgässer and Ludwig Rössing,

WESTFÄLISCHE TRANSPORT-AKTIENGESELLSCHAFT, Dortmund, Malinckrodtstrasse 320, represented by its directors, Messrs Friedrich G. Müller, Managing Director, and Wolfgang Dix, assisted by Messrs. Dres, Modest, Heeman, Mensen, Gündisch, Binder and Brändel, Advocates of Hamburg 39, Sierichstraße 78, with an address for service in Luxembourg at the office of Felicien Jansen, Huissier de Justice, 21 rue Aldringer,

applicants,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Claus-Dieter Ehlermann, Member of the Legal Department of the European Executives, acting as Agent, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application concerning the possible default of the Commission in failing to put into operation as respects the Federal Republic of Germany the procedure laid down in Article 169 of the Treaty establishing the European Economic Community concerning the fixing of derived intervention prices of cereals,

1—Language of the Case: German.
2—CMLR.

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes and A. Trabucchi, Presidents of Chambers, L. Delvaux, R. Rossi, R. Lecourt (Rapporteur), and W. Strauß, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The Council of the EEC on 4 April 1962 adopted Regulation No 19 providing for the progressive establishment of a common organization of the market in cereals (Official Journal of 20 April 1962, pp. 933/62 et seq.). Article 5 of this Regulation provides, in its first two paragraphs, that:

'1. The Member States shall fix annually for each of the products mentioned in Article 4, at the wholesale-buying stage, a basic target price, applicable for the marketing centre of the area with the greatest deficit, for a specific standard quality, taking into account the price to be obtained by producers within the framework of the decisions of the Council concerning the fixing of prices. This price, to be fixed before the winter sowing, shall enter into force at the beginning of the marketing year. It shall be notified to the other Member States and to the Commission.

2. Where, owing to the natural conditions of price formation on the market, the difference between the market price in the marketing centre of the area with the largest deficit, on the one hand, and in the marketing centre of the area with the largest surplus, on the other hand, exceeds 5%, the Member States shall determine, on the basis of the basic target price provided for in paragraph 1, derived target prices in the important regional marketing centres, according to differences of price due to the natural conditions of price formation.'

The beginning of Article 7 of the same Regulation provides that:

'1. In order to guarantee to producers sales at a price as near as possible to the target prices, taking into account market fluctuations, the Member States shall fix for the beginning of the marketing year intervention prices for the products which are the subject of fixed target prices. These intervention prices shall be equal to the target prices less a fixed percentage, determined by each Member State, between a minimum of 5% and a maximum of 10%.

2. Nevertheless Member States may fix, in centres other than the centre of the region with the largest deficit, intervention prices at a higher level than intervention prices which would have been fixed taking into account derived

target prices. This increase in intervention prices shall not exceed, in the centre where the derived target price is the lowest, 50% of the difference between the target price and the intervention price fixed in accordance with paragraph 1. In the immediate centres, the difference between target prices and intervention prices must increase to the extent to which the level of derived target prices becomes closer to that applicable in the area with the greatest deficit.'

The applicants considered that the present state of German legislation did not conform to the provisions of Regulation No 19. In particular, this legislation excludes from the transitional regulations all purely harbour installations, which would cause, in centres with purely harbour installations, a difference between the derived target price and the derived intervention price of a percentage greater than the difference between these same prices in the marketing centre of the area with the greatest deficit.

The applicants' advocate, in consequence, asked the Commission by letter of 31 July 1963:

'in accordance with Article 155 of the Treaty establishing the EEC, to ensure that the government of the Federal Republic of Germany carries out the obligation imposed upon it by Article 7 (2) of Regulation No 19 by eliminating without delay any discrimination in respect of purely harbour installations in the fixing of intervention prices.'

By telegram of 21 November 1963, the applicants' advocate asked for this letter to be considered and stressed the necessity for a reply.

The applicants then made an application which was lodged at the Court Registry on 29 November 1963.

The same day the applicants received a letter dated 25 November 1963 from the Directorate-General of Agriculture of the Commission and signed 'L.-G. Rabot'.

This letter acknowledged receipt of the letter and the telegram mentioned above and went on:

'After your letter of 31 July 1963, the departments of the Commission began consideration of the question which you have raised. It has not yet been possible to complete this consideration, since it has proved necessary to consider at the same time the application of the provisions of Article 5 (2) of Regulation No 19.

'As soon as the results of this examination are known they will be sent to you.

'In respect of the request included in your letter and your telegram, we have pointed out that an undertaking, within the meaning of the third paragraph of Article 175 of the EEC Treaty, is justified in making an application to the Court of Justice of the European Communities under the first and second paragraphs of Article 175, only if a Community institution has, in respect of that undertaking, failed to adopt any act other than a recommendation or an opinion.

'We are unable to ascertain from your letter and your telegram what in your opinion is the act that the Commission has omitted to adopt. The measures which the Commission may be led to take within the framework of the abovementioned Regulation do not appear to us in any case to be capable of resulting in the Commission's adopting an act in respect of the applicants. In consequence we do not see how the conditions for the application of the second paragraph of Article 175 have been fulfilled.'

Lastly, during the proceedings and by letter of 23 April 1964 addressed to the Federal Republic of Germany, the Commission commenced the procedure provided for in Article 169 of the Treaty.

II — Conclusions of the parties

The *applicants* have in their application asked the Court:

'1. To hold that the defendant infringed Article 155 of the Treaty establishing the EEC and the third sentence of Article 7 (2) of Regulation No 19 of the Council of the EEC of 4 April 1962, providing for the progressive establishment of a common organization of the markets in the cereals sector (OJ 1962, pp. 933 et seq.), in that it failed:

(a) to consider the request of the applicants of 31 July 1963 and to take a decision in respect of them on the question whether the Federal Republic of Germany had infringed the Treaty of 25 March 1957 instituting the European Economic Community, by fixing the derived intervention prices for purely harbour installations in its territory connected directly by waterway with the centres of the area with the largest deficit (Duisburg), in contravention of the third sentence of Article 7 (2) of Regulation No 19 of the Council of the EEC of 4 April 1962, when drafting paragraph 1 together with Schedule 4 of the Law of 19 July 1963 (BGB l. I, pp. 493 et seq.), implementing Regulation No 19 (cereals) of the Council of the EEC;

(b) To use, in respect of the Federal Republic of Germany, the power conferred on it by Article 169 of the EEC Treaty in accordance with its obligations under Article 155 of the EEC Treaty and to decide whether, in drafting paragraph 1 together with Schedule 4 of the Law of 19 July 1963 (BGBl. I, pp. 493 et seq.), applying Regulation No 19 (cereals) of the Council of the EEC, the Federal Republic of Germany has fixed, in contravention of the third sentence of Article 7 (2) of Regulation No 19 of the Council of the EEC of 4 April 1962, derived intervention prices for purely harbour installations on its territory connected directly by waterway with the centre of the area with the greatest deficit (Duisburg) and to inform the applicants of the measures taken against the Federal Republic of Germany;

2. To order the Commission to pay the costs.'

The *defendant* in a statement raising the objection of inadmissibility contends that the Court should:

'decide, without considering the substance of the case, on the admissibility of the application in accordance with Article 91 of the Rules of Procedure, declare the application to be inadmissible and order the applicants to bear the costs.'

The *applicants* claim in their observations on this objection that the Court should:

'1. Dismiss the application of the defendant for a preliminary decision on the admissibility of the application;

2. Alternatively, suspend a decision on the application of the defendant for a preliminary decision until the defendant, within a time-limit laid down by the President, has produced a statement in reply concerning the substance of the case.'

III — Procedure

The Court heard the oral arguments of the parties at the hearing on 14 May 1964 on the objection of inadmissibility raised by the defendant. In the course of this hearing new facts were submitted

which led the applicants to declare that the object of their requests in the main action had been achieved.

The Advocate-General presented his reasoned oral opinion at the hearing on 4 June 1964.

Grounds of judgment

During the oral procedure the applicants first of all explained that the letter which the defendant sent to them on 25 November 1963 had satisfied their first principal request, which was that the Commission should consider their letter of 31 July 1963 and inform them of the result of such consideration.

The applicants were thus in fact informed on 25 November 1963 that the Commission's departments had begun to consider the questions raised on 31 July 1963 and that the result of such consideration would be sent to them later.

In the second place, during the oral procedure and after the defendant's oral address, the applicants stated that they had achieved the object of their second principal request, proceedings having been instituted under Article 169 by the Commission against the Federal Republic of Germany in respect of the matter in dispute.

It thus follows from the foregoing that the principal requests of the applicants have no further purpose and consequently that there is no need to adjudicate upon them.

Costs

In addition to the principal requests, the application asks that the defendants be ordered to bear the costs. The applicants stated that they would not withdraw their application in order to allow the Court to decide upon this question.

In accordance with the wording of Article 69 (5) of the Rules of Procedure the costs shall be in the discretion of the Court where a case does not proceed to judgment.

Without having to consider to what extent the application was admissible and well founded, the Court finds, given the circumstances of the case and the course taken by the proceedings, sufficient ground to decide that the parties must bear their own costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69;

THE COURT

hereby rules:

1. The issues in the case have been disposed of;

2. The parties shall bear their own costs.

Donner Hammes Trabucchi Delvaux
Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 2 July 1964.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 4 JUNE 1964[1]

Mr President,
Members of the Court,

In this case the applicants are German companies carrying on undertakings dealing with transport, chartering, trans-shipment and storage of German and foreign cereals.
They consider that they have suffered commercial loss as a result of the German law implementing Regulation No 19 of the Council of the EEC as set out on 19 July 1963 (BGBl. I, pp. 493 et seq.). They consider that this law infringes the third sentence of Article 7 (2) of Regulation No 19 to the extent that it set derived intervention prices at too low a level for the purely harbour centres of the Federal Republic, that is to say the localities connected directly by waterway with the marketing centre of the area with the largest deficit. This

1 — Translated from the German.