JUDGMENT OF THE COURT (Fourth Chamber)
1 July 1992 *

In Case C-28/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Frankfurt am Main for a preliminary ruling in the proceedings pending before that court between

Helmut Haneberg GmbH & Co. KG

and

Bundesanstalt für landwirtschaftliche Marktordnung

on the interpretation of Article 6(5) of Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins (OJ 1985 L 342, p. 1),

THE COURT (Fourth Chamber),

composed of: P. J. G Kapteyn, President of the Chamber, C. N. Kakouris and M. Diez de Velasco, Judges,

Advocate General: G. Tesauro,
Registrar: J. A. Pompe, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Helmut Haneberg GmbH & Co. KG, by Barbara Festge, Rechtsanwalt, Hamburg;

* Language of the case: German.

— the Commission of the European Communities, by Ulrich Wölker, of its Legal Service, acting as Agent;

having regard to the Report for the Hearing,

after hearing the oral observations of Helmut Haneberg GmbH & Co. KG and the Commission at the hearing on 14 January 1992,

after hearing the Opinion of the Advocate General at the sitting on 26 February 1992,

gives the following

Judgment

1 By order of 2 January 1991, received at the Court Registry on 28 January 1991, the Verwaltungsgericht (Administrative Court) Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Article 6(5) of Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins (OJ 1985 L 342, p. 1).

2 Those questions arose in the course of proceedings between Helmut Haneberg GmbH & Co. KG (hereinafter 'Haneberg') and the Bundesanstalt für landwirtschaftliche Marktordnung (Federal Office for the Organization of Agricultural Markets, hereinafter 'the BALM') relating to the certificates of purchase at the minimum price laid down in connection with the system of aid for the processing of peas.

Community legislation

3 Council Regulation (EEC) No 1431/82 of 18 May 1982 laying down special measures for peas and field beans (OJ 1982 L 162, p. 28) established a system of aid for

those products harvested in the Community and used in the manufacture of animal feed and human foodstuffs in order to protect production within the Community. Under the system created by that regulation, aid is not paid directly to producers but, as stated in Article 3(3), 'to operators using the said products ... who satisfy the conditions necessary to qualify for aid [and] guarantee that the producer has received not less than the minimum price' as fixed in accordance with the provisions of the said regulation.

4 Article 2a of Regulation No 1431/82 as amended by Council Regulation (EEC) No 1485/85 of 23 May 1985 (OJ 1985 L 151, p. 7) provided for monthly increases in the minimum price.

5 The general arrangements for the granting of aid and the verification procedures are set out in Council Regulation (EEC) No 2036/82 of 19 July 1982 adopting general rules concerning special measures for peas and field beans (OJ 1982 L 219, p. 1) as amended by Council Regulations (EEC) Nos 1734/84 of 18 June 1984 (OJ 1984 L 164, p. 3) and 1832/85 of 27 June 1985 (OJ 1985 L 173, p. 3).

6 Pursuant to Article 4(1) of Regulation No 2036/82, as amended, the first buyer lodges a delivery declaration with the agency appointed by the Member State in which the product is harvested. That declaration certifies, *inter alia*, the quantity of products delivered by the producer and the price conditions shown on the contract, which comprise in particular a price not less than the minimum price increased, where appropriate, by monthly increments (Article 3(2)). The agency appointed by the Member State, after verifying the content of the declaration, issues the first buyer with a certificate confirming that the producer has obtained at least the minimum price for the quantity he has delivered and the monthly increments (Article 4(2)).

7 Pursuant to Article 5 of the same regulation the aid is granted to any natural or legal person who uses the products provided that:

— he lodges an application and the certificate referred to in Article 4(2) with the agency appointed by the Member State on whose territory the product has been used, and

— the quantity specified in the certificate has actually been used, after being placed under supervision in the undertaking in which use took place.

8 The rules for the application of the system are laid down primarily in Articles 5 and 6 of Regulation No 3540/85. Pursuant to Article 6(5) of that regulation,

'Should Member States discover that they have issued certificates of purchase at the minimum price for more than the actual quantities involved, they shall recover the certificates for the excess quantities, or, if the certificates have been passed on, they shall require the first buyer to pay an amount equal to the highest aid applicable on the date the certificate was issued, multiplied by the excess quantity.'

The dispute in the main proceedings

9 It appears from the order for reference that in 1986 Haneberg purchased peas for which the BALM issued it with certificates of purchase at the minimum price in respect of 40 329 kg and 27 441 kg of peas on 22 October and 3 November 1986 respectively and paid the aid in question after the peas had been processed.

10 An inspection carried out by the BALM on the premises of Haneberg in November 1987 revealed that only a basic minimum price of DM 68.29 per 100 kg had been paid for the quantities in question and that the monthly increment of DM 0.43 per 100 kg had not been paid.

11 By decision of 18 April 1988, citing Article 6(5) of Regulation No 3540/85, the BALM required Haneberg either to produce the certificates of purchase at the minimum price or to pay a sum of DM 25 570.37.

12 Haneberg challenged the latter decision before the Verwaltungsgericht Frankfurt am Main, which decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must Article 6(5) of Commission Regulation (EEC) No 3540/85 of 5 December 1985 (OJ 1985 L 342, p. 3) be interpreted as meaning that the certificate of purchase at the minimum price may be recovered even if the minimum price was not paid?

2. If so, may the certificate of purchase at the minimum price be recovered under Article 6(5) in respect of the whole quantity certified or does only the excess quantity remaining, after the price actually paid per 100 kg of goods delivered has been taken into account as the minimum price count, as the excess quantity?'

13 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The questions referred to the Court for a preliminary ruling

14 By its questions, the national court seeks in substance to ascertain whether the basic regulation No 1431/85 and the implementing Regulation No 3540/85 must be interpreted as meaning that, if the producer has not been paid the minimum price in full, the first buyer is not entitled to the aid, or as meaning that he may receive the aid corresponding to the quantity delivered, but subject to the condition that he first pay the producer the amount corresponding to the supplement necessary to reach the minimum price.

15 Article 8(2) of Regulation No 3540/85 provides as follows:

'In case of doubt as to the accuracy of the information appearing on a certificate of purchase at the minimum price, the latter shall be returned to the issuing body by the person concerned or by the competent department of the Member State concerned.

If the issuing body considers that the conditions for rectification are met, it shall withdraw the certificate of purchase at the minimum price and issue without delay a corrected certificate. The new document shall bear on each copy the words "certificate corrected on ...".

If the issuing body does not consider that it is necessary to correct the certificate of purchase at the minimum price, it shall mark thereon the words "verified on ..." and its stamp.'

16 That article therefore provides for the possibility of rectification in the event of doubt as to the accuracy of the information appearing on the certificate of purchase at the minimum price.

17 In the Commission's opinion, Article 8(2) of Regulation No 3540/85 is not applicable if the minimum price has not been paid in full, because the certificate

of purchase at the minimum price does not mention the price in figures, so that it is not possible for any doubt to exist as to the 'accuracy' of such information. Consequently, there would be no means of rectifying the certificate in a case such as the one to which the main proceedings relate.

18 It should be noted in this regard that indeed the certificate, the form for which is contained in Annex II to Regulation No 3540/85, contains no mention of the amount of the price paid. However, box 7 of the certificate attests that 'for the quantity shown in box 5 the producer has received not less than the minimum price'. If that statement is incorrect, the certificate of purchase must be rectified in accordance with Article 8(2) of Regulation No 3540/85.

19 Nevertheless, it must be said that Article 8(2) of Regulation No 3540/85 is not a sufficient basis for giving a helpful reply to the question referred to the Court, as it provides only for rectification of the certificate so that it reflects the true position, but not for payment of the supplement to the minimum price, which would also necessitate rectification of the certificate.

20 However, it must be accepted that it follows from that provision that the certificate of purchase at the minimum price, once it has been issued by the competent agency, is not inviolate and that in case of doubt as to the accuracy of the information appearing thereon rectification is permitted so that the competent agency may pay the correct amount of aid.

21 As far as Article 6(5) of Regulation No 3540/85 is concerned, the Commission observes that it constitutes a *lex specialis* in relation to Article 8(2). It submits first that Article 6(5) of that regulation applies solely to the case of a difference between the quantity actually delivered by the producer and that shown on the certificate of purchase at the minimum price and not to the case in which the sum paid is less than the minimum price including any monthly increment. According to the Commission, it follows that in the latter case that provision cannot be applied either directly or by analogy.

22 In this regard, it should first be noted that Article 6(5) of Regulation No 3540/85 contemplates the case in which the quantity of legumes shown on the certificate of purchase at the minimum price is higher than that actually delivered and not the case in which there is no doubt as to the quantity delivered but in which the producer has not received the corresponding minimum price, including any monthly increments.

23 Moreover, for the particular case of differences between the quantity shown on the certificate of purchase and the quantity delivered Article 6(5) establishes a correcting mechanism which, whilst excluding full recovery of the aid, consists solely in the recovery by the issuing agency of the certificate of purchase at the minimum price for the excess quantities or, if the agency has paid a larger amount of aid than was due, in the repayment by the first buyer of the excess amount.

24 In the case governed by Article 6(5) the producer has in any case received the minimum price corresponding to the quantity actually delivered.

25 If follows that Article 6(5) of Regulation No 3540/85 has a limited scope, namely rectification solely in the case of a difference between the quantity delivered and the quantity shown on the certificate of purchase at the minimum price, to which specific legal consequences attach. That provision cannot therefore be applied by analogy if the minimum price has not been paid to the producer.

26 The Commission considers, secondly, that if the minimum price, including monthly increments, has not been paid in full to the producer, the certificate of purchase at the minimum price was wrongly issued and that as a consequence the repayment of the full amount of the aid improperly granted should be required.

27 It must be observed that that interpretation has in particular the major disadvantage of not satisfying the objective of the Community rules, which consists, as indicated in the seventh recital in the preamble to Regulation No 1431/82, in enabling farmers to benefit from the system of aid by making the granting of such aid to the first buyer conditional on guarantees that farmers receive not less than the minimum price.

28 Moreover, that interpretation would result in the first buyer's bearing the cost of the aid contained in the price paid to the producer, whereas in the system of the rules under consideration the first buyer is in reality only an intermediary between the competent national agency and the producer, who is the final recipient of the aid. That consequence would be completely unacceptable in a case in which the intermediary had not acted fraudulently.

29 In cases of this kind account should be taken as far as possible of the objective of the rules, which, as stated above, consists in enabling the producer to benefit from the aid granted by the competent agency.

30 In the light of that objective, it must be noted that Article 6(5) of Regulation No 3540/85, even though it contemplates only the particular case of an inaccuracy in the quantity declared, reflects the desire of the legislature to establish a mechanism for rectification if certificates of purchase at the minimum price include inaccuracies.

31 That spirit of the legislation has already been indicated above with regard to Article 8(2) of the regulation, which provides for the rectification of other inaccuracies in the information appearing on the certificate, such as the description of the product, the marketing year or even the certificate by the issuing agency that 'the producer has received not less than the minimum price'.

32 In a case for which there is no express provision, such as that involved in the main proceedings, the Community rules must be interpreted with due regard to their spirit and system, considered in the light of their objective, namely to ensure that the producer receives at least the minimum price.

33 Accordingly, the reply to be given to the national court should be that Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins must be interpreted as meaning that, should the minimum price not have been paid to the producer in full, the first buyer is in principle not entitled to receive the aid envisaged. That aid may however, be received once the first buyer has paid the producer an additional sum to make up the minimum price.

Costs

34 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question referred to it by the Verwaltungsgericht Frankfurt am Main by order of 2 January 1991, hereby rules:

Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans

and sweet lupins must be interpreted as meaning that, should the minimum price not have been paid to the producer in full, the first buyer is in principle not entitled to receive the aid provided. That aid may, however, be received once the first buyer has paid the producer an additional sum to make up the minimum price.

Kapteyn Kakouris Diez de Velasco

Delivered in open court in Luxembourg on 1 July 1992.

J.-G. Giraud
Registrar

P. J. G. Kapteyn
President of the Fourth Chamber