JUDGMENT OF THE COURT (Sixth Chamber)
1 April 2004 *

In Case C-1/02,

REFERENCE to the Court under Article 234 EC by the Finanzgericht Düsseldorf (Germany) for a preliminary ruling in the proceedings pending before that court between

Privat-Molkerei Borgmann GmbH & Co. KG

and

Hauptzollamt Dortmund,

on the validity of the second subparagraph of Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12), as amended by Commission Regulation (EC) No 1001/98 of 13 May 1998 (OJ 1998 L 142, p. 22),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: A. Tizzano,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Privat-Molkerei Borgmann GmbH & Co. KG, by S. Büscher, Rechtsanwalt,

— the French Government, by J. Géraud de Bergues and A. Colomb, acting as Agents,

— the Commission of the European Communities, by M. Niejahr, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Privat-Molkerei Borgmann GmbH & Co. KG and the Commission, at the hearing on 9 April 2003,

after hearing the Opinion of the Advocate General at the sitting on 3 July 2003,

gives the following

Judgment

1 By order of 19 December 2001, received at the Court on 7 January 2002, the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) referred to the Court for a preliminary ruling under Article 234 EC a question on the validity of the second subparagraph of Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products (OJ 1993 L 57, p. 12), as amended by Commission Regulation (EC) No 1001/98 of 13 May 1998 (OJ 1998 L 142, p. 22).

2 That question was raised in proceedings between Privat-Molkerei Borgmann GmbH & Co. KG (hereinafter 'the Borgmann dairy') and the Hauptzollamt Dortmund (Principal Customs Office, Dortmund, the competent authority from 1 January 2002, in place of the Hauptzollamt Bochum, the original competent authority, both hereinafter referred to as 'the HZA'), concerning a penalty imposed by the latter on the dairy for allegedly failing to observe the time-limit laid down in the first subparagraph of Article 3(2) of Regulation No 536/93 for forwarding the information referred to therein.

The legal framework

3 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) extended by seven new consecutive periods of 12 months from 1 April 1993 the

levy scheme introduced from 2 April 1984, and laid down the basic rules applicable to the extended scheme. According to the first subparagraph of Article 2(1) of that regulation, the levy is payable on all quantities of milk or milk equivalent marketed during the 12-month period in question in excess of the relevant quantity referred to in Article 3 for deliveries and direct sales. It is to be shared between the producers who contributed to the overrun.

4 The eighth recital in the preamble to Regulation No 3950/92 states that, in order to avoid long delays between collection and payment of the additional levy, provision should be made for the purchaser to be liable for that levy. Pursuant to the first subparagraph of Article 2(2) of that regulation, before a date and in accordance with detailed rules to be laid down, it is for the purchaser to pay to the competent body of the Member State the amount payable, which he is to deduct from the price of milk paid to producers who owe the levy or, failing this, collect by any appropriate means.

5 On the basis, in particular, of Article 11 of Regulation No 3950/92, the Commission of the European Communities adopted Regulation No 536/93. In accordance with Article 3(4) thereof, it was for the purchaser liable for levies to pay, before 1 September each year, the amount due in accordance with rules laid down by the Member State. Before 15 May each year, the purchaser was also, in accordance with Article 3(2), to forward the necessary information to the competent authority or be liable to financial penalties.

6 According to the fifth recital in the preamble to Regulation No 536/93:

'... experience gained has shown that major delays in both the transmission of figures on collections or direct sales and payment of the levy have prevented the arrangements from being fully effective; ... therefore, lessons should be learned

from the past and the necessary conclusions drawn by laying down strict requirements as regards notification and payment deadlines and providing for penalties where deadlines are not met;'

7 The original version of Article 3(2) of Regulation No 536/93 was worded as follows:

'Before 15 May each year, the purchasers shall forward to the competent authority of the Member State a summary of the statements drawn up for each producer or, where appropriate, by decision of the Member State, the total quantity, the quantity corrected in accordance with Article 2(2) and average fat content of the milk and/or milk equivalent delivered to it by producers and the sum of the individual reference quantities and the average representative fat content of such producers' production.

Where that time-limit is not observed, the purchaser shall be liable to a penalty equal to the amount of the levy due for a 0.1% overrun on the quantities of milk and milk equivalent delivered to them by producers. Such penalty may not exceed ECU 20 000.'

8 In its judgment in Case C-356/97 *Molkereigenossenschaft Wiedergeltingen* [2000] ECR I-5461, the Court ruled that the second subparagraph of Article 3(2) of Regulation No 536/93, as originally worded, was invalid in that it imposed on the purchaser, in the event of failure to observe the time-limit referred to in the first subparagraph of Article 3(2), a financial penalty without making any provision for the length of time by which the time-limit is exceeded to be taken into account.

9 Before that judgment was delivered, the Commission had already adopted Regulation No 1001/98, which replaced the second subparagraph of Article 3(2) of Regulation No 536/93 by the following:

'Where that time-limit is not observed, the purchaser shall be liable to a penalty calculated as follows:

— if the communication referred to in the first subparagraph is made before 1 June, the penalty shall be equal to the amount of the levy due for a 0.1% overrun on the quantities of milk and milk equivalent delivered to them by producers. Such penalty may not be less than ECU 500 nor more than ECU 20 000,

— if the communication referred to in the first subparagraph is made after 31 May but before 16 June, the penalty shall be equal to the amount of the levy due for a 0.2% overrun on the quantities of milk and milk equivalent delivered to them by producers. Such penalty may not be less than ECU 1 000 nor more than ECU 40 000,

— if the communication referred to in the first subparagraph is made after 15 June but before 1 July, the penalty shall be equal to the amount of the levy due for a 0.3% overrun on the quantities of milk and milk equivalent delivered to them by producers. Such penalty may not be less than ECU 1 500 nor more than ECU 60 000,

— if the communication referred to in the first subparagraph is not made before 1 July, the penalty shall be that referred to in the third indent plus an amount equal to 3% of that penalty for each calendar day of delay from 1 July. Such penalty may not exceed ECU 100 000.

However, if the quantities of milk or milk equivalent delivered to the purchaser per period of 12 months are less than 100 000 kilograms, the minimum penalties referred to in the first three indents shall be reduced to ECU 100, 200 and 300 respectively.'

The main proceedings and the question referred to the Court

10 The Borgmann dairy is a privately run dairy. By letter of 10 April 2000, the HZA requested it to send it, by 14 May 2000, by means of the forms enclosed with its letter, the information referred to in the first subparagraph of Article 3(2) of Regulation No 536/93 and in Paragraph 11(3) of the Milchmengen-Garantie-Verordnung (the German regulations on the quantity of milk guaranteed in the milk and milk-product sector, hereinafter 'the MGV'), in respect of the 12-month period running from 1 April 1999 to 31 March 2000, and drew its attention to the fact that failure to observe the time-limit would result in financial penalties.

11 The communication of the Borgmann dairy, dated 11 May 2000 and posted on the same day according to the affidavit sworn by the dairy employees concerned, was, however, not received by the HZA until 16 May 2000.

12 In reliance on the second subparagraph of Article 3(2) of Regulation No 536/93, as amended by Regulation No 1001/98, the HZA, by decision of 29 May 2000, imposed on the Borgmann dairy a penalty of DEM 39 311.60 (ECU 20 000) for late submission of the communication.

13 It gave as its reasons for the decision that a penalty was to be imposed because of failure to observe the time-limit and that such penalty was to be equal to the amount of the levy due for 0.1% of the quantity actually delivered to the

customer/purchaser in the period concerned. Such penalty could not be less than ECU 500 nor greater than ECU 20 000. In view of the information communicated by the Borgmann dairy regarding the quantity of milk delivered, the penalty should have been DEM 55 985.36, reduced to DEM 39 311.60 because of the penalty ceiling of ECU 20 000.

14 By decision of 9 July 2001, the HZA rejected the complaint lodged by the Borgmann dairy against the decision of 29 May 2000. On 13 July 2001, the Borgmann dairy brought an action before the Finanzgericht Düsseldorf.

15 Placing reliance on the judgment in *Molkereigenossenschaft Wiedergeltingen* in which the Court held the second subparagraph of Article 3(2) of Regulation No 536/93 to be invalid since it was contrary to the principle of proportionality, the Finanzgericht expresses some doubts as to the lawfulness of the system of penalties provided for by Regulation No 1001/98 which is, in its view, applicable in the main proceedings. The national court also considers it disproportionate. That system is in fact worse for the milk purchaser than the earlier system which was declared invalid by the Court. The Finanzgericht points out that, where a milk purchaser exceeds the time-limit for submitting the communication only slightly, the system nevertheless provides for a penalty of as much as ECU 20 000. For a milk purchaser which does not submit its communication until after 31 May, the penalty is increased considerably compared with the system declared invalid.

16 The Finanzgericht takes the view that at least in the case of the Borgmann dairy the period between 15 May and 1 June is too widely drawn. It is disproportionate in that it may entail imposition of the full penalty even where the time-limit is exceeded by a single day, without it being apparent that such delay has had any serious effect on the payment of the levy by the purchaser before 1 September, in accordance with the first subparagraph of Article 3(4) of Regulation No 536/93. Accordingly, the disadvantages for the milk purchaser of the (full) payment of the penalty are clearly disproportionate to the aim pursued by the system.

17 The national court submits additional grounds in support of the argument that the system of penalties in question is disproportionate.

18 In those circumstances, the Finanzgericht Düsseldorf decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does the system of penalties laid down in the second subparagraph of Article 3(2) of Regulation No 536/93, as amended pursuant to Regulation No 1001/98, contravene the principle of proportionality in cases where the time-limit is exceeded only marginally and moreover without fault?'

The question referred to the Court

19 With a view to arriving at an interpretation of Community law which will be useful to the national court, it must be stated that the question referred for a preliminary ruling rests on, among others, the premiss that, in the main proceedings, the Borgmann dairy did not observe the time-limit laid down in the first subparagraph of Article 3(2) of Regulation No 536/93.

20 That premiss assumes that the time-limit set refers to the date by which the requisite information must be received rather than that by which it must be sent. In the first case, the information must have been received by the competent authority before 15 May. In the second, it must have been sent before that date.

21 It is therefore necessary to determine first of all the nature of the time-limit concerned, since the question as to whether there has been any breach of the principle of proportionality where the time-limit has been exceeded slightly does not arise, with regard to the circumstances of the present case, unless the time-limit provided for is the time-limit for receipt.

22 The wording of the various language versions of the first subparagraph of Article 3(2) of Regulation No 536/93 does not provide any clear indication in favour of one or other interpretation of the time-limit.

23 As the Advocate General stated in point 44 of his Opinion, in the majority of the language versions, the purchaser is to 'transmit' or 'communicate' to the competent national authority, before 15 May each year, a summary of the statements drawn up for each milk producer. Such wording implies, rather, that the information must be sent before the deadline.

24 However, the Greek ('κοινοποιεί'), Dutch ('bezorgt') and Finnish ('antaa tiedoksi') versions of the provision in question suggest that rather the information must be received before the deadline.

25 Where there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see Case C-437/97 *EKW and Wein & Co* [2000] ECR I-1157, paragraph 42).

26 In that connection, it follows from the fifth recital in the preamble to Regulation No 536/93 that the regulation aims to lay down strict requirements as regards notification and payment deadlines.

27 However, although the 15 May deadline must be observed for the smooth operation of the scheme so as to ensure the punctual payment of the sums owed, it cannot be concluded that observance of that deadline is absolutely indispensable to its smooth operation, since a slight delay would not jeopardise payment of the additional levy on milk before 1 September (see *Molkereigenossenschaft Wiedergeltingen*, cited above, paragraph 41).

28 At the hearing, the Commission stated that it did not object to 15 May being regarded as the date before which the information must be sent. Indeed, it takes the view that the period between 15 May and 1 September is sufficient time in which to avoid insurmountable practical problems.

29 Accordingly, neither the general scheme nor the purpose of the legislation at issue precludes the deadline in question from being understood as a deadline for dispatch so that, in some circumstances, the information to be transmitted may not be received by the competent authority of the Member State until several days after 15 May.

30 Furthermore, where it is necessary to interpret a provision of secondary Community law, preference should as far as possible be given to the interpretation which renders the provision consistent with the EC Treaty and the general principles of Community law (Case C-98/91 *Herbrink* [1994] ECR I-223, paragraph 9) and, more specifically, with the principle of legal certainty.

31 That principle requires in particular that rules such as those before the Court, which may lead to the imposition of charges on the economic operators concerned, must be clear and precise, so that they can know unequivocally what their rights and obligations are and take steps accordingly (Case C-236/02 *Slob* [2004] ECR I-1861, paragraph 37).

32 In a situation such as that obtaining in the main proceedings, where a provision of secondary legislation is open to diverging interpretations and where none of the interpretations under consideration compromises the objectives pursued by that provision, it must be held that the time-limit laid down in the first subparagraph of Article 3(2) of Regulation No 536/93 must be understood as a time-limit for dispatch.

33 In those circumstances, since the Borgmann dairy complied with that requirement in the main proceedings, as is clear from the order for reference, there is no need to answer the question referred by the national court in the terms in which it was submitted to the Court.

34 The answer to be given to the national court must therefore be that Article 3(2) of Regulation No 536/93, as amended by Regulation No 1001/98, must be interpreted as meaning that milk purchasers comply with the time-limit laid down in that provision where they send the requisite information to the competent authority before 15 May of the relevant year.

Costs

35 The costs incurred by the French Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Sixth Chamber),

in answer to the question referred to it by the Finanzgericht Düsseldorf by order of 19 December 2001, hereby rules:

Article 3(2) of Commission Regulation (EEC) No 536/93 of 9 March 1993 laying down detailed rules on the application of the additional levy on milk and milk products, as amended by Commission Regulation (EC) No 1001/98 of 13 May 1998, must be interpreted as meaning that milk purchasers comply with the time-limit laid down in that provision where they send the requisite information to the competent authority before 15 May of the relevant year.

Skouris Gulmann Puissochet

Schintgen Colneric

Delivered in open court in Luxembourg on 1 April 2004.

R. Grass V. Skouris

Registrar President