JUDGMENT OF THE COURT (Fifth Chamber)
21 April 1988 *

In Case 338/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretore (Magistrate), Lucca, for a preliminary ruling in the action pending before him between

Fratelli Pardini SpA

and

1. **Ministero del commercio con l'estero** (Ministry of Foreign Trade)

and

2. **Banca toscana** (Lucca branch)

on the interpretation and validity of certain provisions of Community regulations concerning the advance fixing of monetary compensatory amounts,

THE COURT (Fifth Chamber)

composed of: G. Bosco, President of Chamber, U. Everling, Y. Galmot, R. Joliet and F. Schockweiler, Judges,

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of:

Fratelli Pardini SpA by Giovanni Maria Ubertazzi and Fausto Capelli, of the Milan Bar,

* Language of the Case: Italian.

the Italian Government by Ivo M. Braguglia, Avvocato dello Stato,

the Commission of the European Communities by its Legal Adviser Giuliano Marenco and by J. Heine, in the capacity of expert,

having regard to the Report for the Hearing and further to the hearing on 7 October 1987,

after hearing the opinion of the Advocate General delivered at the sitting on 18 November 1987,

gives the following

Judgment

1 By an order of 29 October 1985, which was received at the Court on 14 November 1985, the Pretore, Lucca, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation and validity of certain provisions of Community regulations concerning exchange rates to be applied in agriculture and the advance fixing of monetary compensatory amounts.

2 The questions were raised in the context of interlocutory proceedings brought by Fratelli Pardini SpA (hereinafter referred to as 'Pardini') against the Italian Ministry of Foreign Trade and Banca toscana for an order that Banca toscana should not pay the sum of LIT 98 280 000 claimed by the Ministry by way of forfeiture of security lodged in respect of the importation of 21 000 tonnes of common wheat from non-member countries.

3 It is apparent from the documents before the Court that on 17 May 1983 at 12.39 pm Pardini applied to the Ministry of Foreign Trade for an import licence in order to import the aforementioned quantity of common wheat from non-member countries, with advance fixing on the day of the application of both the levy and the monetary compensatory amounts. The application was accompanied by security of LIT 98 280 000 in the form of a guarantee furnished by the Lucca

branch of Banca toscana. The monetary compensatory amount applicable at that time was LIT 6 403 per tonne of wheat in favour of the importer.

4 By letter of 20 June 1983 Pardini requested the cancellation of the import licence and release of the security furnished on the ground that in the meantime a new representative rate for the Italian lira involving the abolition of monetary compensatory amounts for Italy had been decided on with effect from 23 May 1983, which would give rise to the adjustment of monetary compensatory amounts fixed in advance between 17 and 23 May 1983.

5 That request was rejected by letter of the Ministry of Foreign Trade of 22 October 1983 on the ground that the applicable Community rules did not permit the cancellation sought, and Pardini therefore instituted interlocutory proceedings before the Pretore, Lucca, pursuant to Article 700 of the Codice di Procedura Civile (Code of Civil Procedure) (procedure in cases of urgency). By order of 29 October 1985, the Pretore ordered suspension of the payment and decided to put the following preliminary questions to the Court:

'1. Must Article 7 (1) of Regulation No 1160/82 (Official Journal 1982, L 134, p. 22) be interpreted as meaning that the adjustment of monetary compensatory amounts fixed in advance may be applied only to amounts so fixed after the actual publication in the *Official Journal of the European Communities* of the new representative rates for national currencies against the ecu (European currency unit)?

2. If the answer to Question 1 is in the negative, may the adjustment of monetary compensatory amounts provided for in Article 7 (1) of Regulation No 1160/82 be applied to amounts fixed in advance before publication in the *Official Journal of the European Communities* of the new representative rates for national currencies, and if so is the date to be adopted for such application:

(a) the date on which the political intention of the Council to change the representative rate crystallized by virtue of the agreement of all the Member States (in this case, 20 May 1983); or

(b) the date of the announcement, by means of a notice in the press, of the intention of the Council of Ministers of the EEC to adopt the new representative rate, even though it was acknowledged that a reservation, which was resolved after publication of the notice in the press, had been formulated by a Member State?

3. Must the last paragraph of Article 4 (1) of Regulation No 1134/68 of the Council be interpreted, in the light of the provisions of Regulation Nos 878/77 (Official Journal 1977, L 106) and 1054/78 (Official Journal 1978, L 134) and subsequent amendments, as meaning that the trader concerned may in all cases obtain cancellation of the advance fixing of the levy and of the compensatory amounts, and also of the relevant (import) document or certificate if he submits the appropriate application within the prescribed period and if there has been a change in the representative rate such as the change made by the Council by means of Regulation No 1223/83 (with reference to Regulation No 878/77), such change being regarded as equivalent to an alteration of the relationship between the parity of the currency of the Member State concerned and the value of the unit of account as referred to in Article 4 of Regulation No 1134/68?

4. If Questions 2 (a) and 3 are answered in the affirmative, must the last indent of Article 1 of Commission Regulation No 1244/83, which amends Article 2 of Regulation No 1054/78 to the effect that the last subparagraph of Article 4 (1) of Regulation No 1134/68 can be applied only to advance fixings carried out before 17 May 1983, be regarded as inapplicable, at least as regards applications for cancellation of certificates in respect of which advance fixing was carried out in Italy between 17 May and 20 May 1983 inclusive, in view of the need to uphold the principle of the protection of legitimate expectations as regards the traders concerned?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the provisions of Community law in question, the course of the procedure and the 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 Court's jurisdiction

7 The Commission has expressed doubts regarding the Court's jurisdiction to reply to the request for a preliminary ruling on the ground that the Court's decision cannot be of any use to the Pretore, who brought the matter before the Court in the course of interlocutory proceedings whilst at the same time granting the interim measure sought which was the sole object of those proceedings. Those proceedings, it says, were therefore concluded at that moment and the Court's reply can be of no further use except for the purposes of the proceedings on the

substance of the case, which have, however, not yet been commenced and must, moreover, be brought before a court or tribunal other than that which is seeking a preliminary ruling.

8 As the Court has consistently held, Article 177 of the EEC Treaty establishes a framework for close cooperation between the national courts and the Court of Justice based on the assignment to each of different functions. Within that framework it is for the national court, which is alone in having a direct knowledge of the facts of the case, and which will have to give judgment in the case, to assess the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment. Similarly, it is for the national court to decide at what stage of the procedure it is necessary for it to refer a question to the Court of Justice for a preliminary ruling.

9 Although the national courts therefore have the widest power to seek a preliminary ruling from the Court if they consider that a case pending before them raises questions of Community law, that power is nevertheless conferred on them solely in order to enable them to resolve disputes before them by taking account of the elements of Community law clarified by the Court. It was in those terms that the Court held in its judgment of 11 June 1987 (Case 14/86 *Pretore di Salò* v *Persons unknown* [1987] ECR 2545) that its jurisdiction to reply to a request for a preliminary ruling is subject to the requirement that the request emanates from a court or tribunal which has acted in the general framework of its task of judging, independently and in accordance with the law, cases coming within the jurisdiction conferred on it by law.

10 In that respect it is not possible to uphold the interpretation put forward by the plaintiff in the main proceedings that the concept of court or tribunal for the purposes of Article 177 covers all the courts or tribunals amongst which the various functions leading to a final decision on the merits are distributed, regardless of which judicial bodies are seised at various stages of a single dispute. It follows from both the wording and the scheme of Article 177 that only a national court or tribunal which considers that the preliminary ruling requested 'is necessary to enable *it* to give judgment' may exercise the right to bring a matter before the Court. That right is therefore limited to a court or tribunal which considers that a case pending before it raises questions of Community law requiring a decision on *its* part.

11 It follows that a national court or tribunal is not empowered to bring a matter before the Court by way of a reference for a preliminary ruling unless a dispute is pending before it in the context of which it is called upon to give a decision capable of taking into account the preliminary ruling. Conversely, the Court of Justice has no jurisdiction to hear a reference for a preliminary ruling when at the time it is made the procedure before the court making it has already been terminated.

12 In the instant case, despite the fact that the decision to make a reference to the Court for a preliminary ruling was contained in an order which also granted the interim measure sought there is nothing in the statement of the grounds on which that order is based to show that the preliminary ruling is to enable the court making the reference itself to arrive at a judicial decision. In addition, it must be pointed out that by making the order for reference the Pretore acceded to a request made by the plaintiff in the main proceedings which was based on the express consideration that a reference at the stage of interlocutory proceedings could accelerate the subsequent proceedings before the court hearing the merits, which is different from the court which hears interlocutory matters.

13 In order to clarify this point, the Court requested the plaintiff in the main proceedings and the Italian Government to provide more detailed information on the course of interlocutory proceedings in urgent matters in general and of this case in particular. It appears from the explanations provided that this case has a special feature inasmuch as the Pretore, having granted the interim measure *ante causam* and *ex parte* failed at the same time to set a date for the appearance before him of all parties, as is required by the relevant rules of procedure; the Corte Suprema di Cassazione (Supreme Court of Cassation) has held that in such a case the Pretore remains seised of the dispute and may summon the parties at any time in order to confirm, vary or discharge the measure ordered as long as proceedings on the merits have not been commenced.

14 In view of those explanations and in the absence of any element in the documents before the Court indicating that proceedings on the merits have been commenced, the interlocutory proceedings which gave rise to the reference to the Court must be regarded as still pending before the Pretore, who may take account of the preliminary ruling for the purposes of his own decision confirming, varying or discharging his original order. He was therefore still empowered to put preliminary questions to the Court under Article 177 of the EEC Treaty and the Court has jurisdiction to reply to them.

The first and second questions

15 The first and second questions, which should be examined together, seek in substance to ascertain whether the Commission acted lawfully in prescribing in Regulation No 1245/83 of 20 May 1983 that the adjustment of monetary compensatory amounts fixed in advance in the event of a change in the representative rates, as provided for in Article 7 (1) of Commission Regulation No 1160/82 of 14 May 1982, must be made in respect of all advance fixings for which the application was lodged after 16 May 1983 if the transaction concerned was carried out after 22 May 1983.

16 In order to give a proper reply it is necessary first of all to summarize the monetary events which form the background to the dispute in the main proceedings and the relevant Community rules.

17 In the course of a meeting held on 16 and 17 May 1983, the Council reached an agreement, which was accepted by the Italian delegation subject to confirmation, on an alteration of the representative rates for green currencies. The meeting in question came to an end on 17 May 1983 towards 5 o'clock in the morning and was immediately followed by a press release.

18 Italy withdrew its reservations on 20 May 1983, and on that date the Council adopted Regulation No 1223/83 on the exchange rates to be applied in agriculture, which was published in the Official Journal of 21 May 1983 (Official Journal 1983, L 132, p. 33). Article 2 (1) of that regulation, in conjunction with Annex VII thereto, laid down a new representative rate *inter alia* for the Italian lira and provided that the new rate was to apply from 23 May 1983.

19 On 20 May 1983, in order to give effect to the Council legislation, the Commission adopted *inter alia* Regulation No 1245/83 fixing the monetary compensatory amounts and certain coefficients and rates required for their application (Official Journal 1983, L 135, p. 3). By that measure it adjusted the monetary compensatory amounts in the light of the monetary changes which had been made; for Italy the adjustment consisted in the abolition of monetary compensatory amounts in all sectors. In addition, Article 4 of Regulation No 1245/83, in conjunction with Annex IVa thereto, provided that the adjustments to be made to monetary compensatory amounts fixed in advance were applicable, in

the case of Italy, to applications for advance fixing lodged after 16 May 1983, provided that the transaction in question was not completed before 23 May 1983, the date on which the new representative rates came into effect.

20 As is apparent from the very wording of Article 4 of Regulation No 1245/83, that provision was adopted pursuant to Article 7 (1) of Commission Regulation No 1160/82 of 14 May 1982 providing for the advance fixing of monetary compensatory amounts (Official Journal 1982, L 134, p. 22). That provision states as follows: 'The monetary compensatory amounts fixed in advance shall be adjusted if a new representative rate, decided on before the application for advance fixing was lodged, comes into effect'.

21 In that connection the plaintiff in the main proceedings and the Italian Government maintain that the expression 'decided on' contained in Article 7 (1) of Regulation No 1160/82 refers to the measure which presents the Council's intention to alter the representative rates in a legally binding manner, that is to say in this case Regulation No 1223/83. As that measure took effect, as regards the Italian lira, on 23 May 1983, only monetary compensatory amounts relating to Italy fixed in advance on or after that date could be adjusted. In any event, the principle of the protection of legitimate expectations precludes the application of the rules in question to applications for advance fixing lodged before the date on which Regulation No 1223/83 was published in the Official Journal.

22 The Commission, on the other hand, considers that the adjustment of monetary compensatory amounts fixed in advance may extend to all applications for advance fixing lodged after the Council's actual political decision to alter the representative rates, regardless of the reservation entered by the delegation of one Member State to the effect that its agreement was subject to confirmation. Such an interpretation is required, in its view, in the light of the objective of the rules in question, which is to prevent traders from being able to benefit from advance fixing on the basis of the old amounts once they can no longer reasonably have any doubts regarding the imminent entry into force of the new amounts.

23 With regard to those observations submitted by the parties, it must be emphasized that Article 4 of Commission Regulation No 1245/83 contains rules which are subsequent and specific in relation to those contained in Article 7 (1) of

Commission Regulation No 1160/82. The questions raised must therefore be resolved solely within the framework of the former provision, and there is no need to have resort to the interpretation of Article 7 (1) of Regulation No 1160/82.

24 As the Commission rightly emphasized, the system of adjustment of monetary compensatory amounts is intended to prevent speculation and abuse which might occur during the period between the discussions within the Council, of which traders are immediately aware from trade sources or from the press, and the date when the new representative rates take effect. During that period applications for advance fixing might be lodged with the sole aim of benefiting from monetary compensatory amounts which are still in force but whose imminent adjustment is already foreseeable. It is therefore consistent with the objective pursued to choose the date on which the Council's intention to alter the representative rates was made public, that is to say in this case 17 May 1983, as the date to be taken into consideration for the adjustment of amounts fixed in advance.

25 Contrary to the submissions of the plaintiff in the main proceedings and the Italian Government, such a course of action does not disregard the requirements of the principle of the protection of legitimate expectations. That principle does not preclude the adjustment of monetary compensatory amounts fixed in advance in a situation such as that in issue where the traders concerned must reasonably expect, at the moment when they lodge their application for advance fixing, an imminent alteration of the representative rates and the consequent adjustment of the monetary compensatory amounts and where they have every possibility of acquainting themselves with the outcome of the discussions within the Council. In such circumstances those traders may no longer legitimately expect the rates in force at the time of advance fixing to be retained.

26 For the same reason the solution adopted is consistent with the principle of legal certainty. The retroactive effect of the fact that adjustment relates to all applications for advance fixing lodged after a date prior to the Council's definitive decision on new rates is not contrary to that principle since traders must reasonably expect such a change in their position, as has been explained above.

27 Consequently, the reply to the first and second questions must be that the Commission acted lawfully in prescribing, in Regulation No 1245/83 of 20 May 1983, that the adjustments to be made to monetary compensatory amounts fixed in advance in the event of a change in the representative rates, as provided for in Article 7 (1) of Commission Regulation No 1160/82 of 14 May 1982, must be made in respect of all advance fixings for which the application was lodged after 16 May 1983 if the transaction concerned was carried out after 22 May 1983.

The third and fourth questions

28 In the third and fourth questions, which should be examined together, the Pretore seeks to ascertain in substance whether the second subparagraph of Article 4 (1) of Council Regulation No 1134/68 of 30 July 1968 and Article 4 (2) of Council Regulation No 1223/83 of 20 May 1983 must together be interpreted as meaning that cancellation of advance fixings may be obtained in all cases where the conditions laid down in those provisions are satisfied or whether the Commission acted lawfully in limiting, by Regulation No 1244/83 of 20 May 1983, the right to obtain cancellation of advance fixings effected before 17 May 1983.

29 In order to give a proper reply it is necessary first of all to summarize the general rules governing cancellation of advance fixings.

30 Indent (a) of the first subparagraph of Article 4 (1) of Council Regulation No 1134/68 of 30 July 1968 laying down rules for the implementation of Regulation (EEC) No 653/68 on conditions for alterations to the value of the unit of account used for the common agricultural policy (Official Journal, English Special Edition 1968 (II), p. 396) provides in substance that in the event of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account, the Member State concerned, using the new parity relationship, is to adjust the amounts, given in units of account, which have been fixed in advance for a transaction or part of a transaction still to be carried out after alteration of that parity relationship if those amounts appear in national currency in the documents issued in pursuance of the common agricultural policy. However, the second subparagraph of Article 4 (1) provides that 'any person who has obtained advance fixing of such amounts for a specific transaction may, by written application which must reach the competent authority within 30 days of

the entry into force of the measures fixing the altered amounts, obtain cancellation of the advance fixing and of the relevant document or certificate'.

31 Article 4 (1) of Council Regulation No 1223/83, referred to above, provides in substance that the provisions of Regulation No 1134/68 in respect of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account are to apply to alterations in the representative rates with which that regulation is concerned. However, Article 4 (2) of Regulation No 1223/83 provides that the second subparagraph of Article 4 (1) of Regulation No 1134/68 'shall apply only if the application of the new representative rates is disadvantageous to the party concerned'

32 This last provision was supplemented by Article 1 of Commission Regulation No 1244/83 of 20 May 1983 amending Regulation (EEC) No 1054/78 following the fixing of a new exchange rate to be applied in agriculture for the German mark, the Irish pound, the French franc, the Greek drachma, the Italian lira and the Dutch guilder (Official Journal 1983, L 135, p. 1) to the effect that, as regards the representative rate for the Italian lira, the provisions of the second subparagraph of Article 4 (1) of Regulation No 1134/68 'shall apply only to advance fixings and to certificates or titles attesting them issued . . . before 17 May 1983'. It should be added that Commission Regulation No 1244/83 was adopted on the basis of Article 6 of Council Regulation No 1223/83, under which the Commission is to adopt the detailed rules for implementing Regulation No 1223/83.

33 The plaintiff in the main proceedings and the Italian Government maintain that the aforementioned Council legislation, namely Regulations Nos 1134/68 and 1223/83, give traders the right to obtain cancellation of advance fixings whenever, as a result of the adjustment of amounts fixed in advance, the terms of the transaction have changed to the disadvantage of the person concerned. Cancellation of the transaction constitutes a remedy in respect of the monetary changes which have taken place; it therefore operates in favour of all traders who would otherwise suffer harm as a result of monetary fluctuations. It follows that in so far as Commission Regulation No 1244/83 limits the possibility of cancellation to advance fixings effected before 17 May 1983 that measure is contrary both to the Council legislation and to the principle of the protection of legitimate expectations. The plaintiff in the main proceedings also claims that the statement of the reasons upon which Regulation No 1244/83 is based contains no grounds justifying the contested rule.

34 The Commission, on the other hand, considers that neither Regulation No 1134/68 nor Regulation No 1223/83 provides any possibility of cancellation in a case such as this. The Council legislation relates solely to amounts fixed in units of account and expressed in national currency, such as levies and refunds, and not to amounts fixed directly in national currency, such as monetary compensatory amounts. Such a difference in treatment is justified by the fact that levies and refunds are automatically adjusted by the Member States following an alteration of the representative rates whereas monetary compensatory amounts are adjusted by the Commission, which, in so doing, limits the adjustment to advance fixings effected after the date on which the monetary change became foreseeable by traders. The principle of the protection of legitimate expectations, which requires that the cancellation of levies and refunds must be possible because of the automatic nature of their adjustment, is therefore observed, as regards monetary compensatory amounts, by the temporal limitation on their adjustment.

35 According to its clear wording, Article 4 (1) of Council Regulation No 1134/68, to which Article 4 of Council Regulation No 1223/83 refers, relates solely to amounts fixed in units of account and expressed in national currency, such as levies and refunds. The Community legislation does not contain any provision expressly providing for the possibility of cancelling advance fixings of monetary compensatory amounts. However, the second subparagraph of Article 2 (1) of Commission Regulation No 1160/82 provides as follows: 'The monetary compensatory amount may be fixed in advance only in the case of licences or certificates under which the import or export levy or export refund is fixed in advance'. That provision implies that if the advance fixing of the levy or refund is cancelled the advance fixing of the monetary compensatory amount relating to the transaction must also be cancelled.

36 It must be emphasized that according to Article 4 (2) of Regulation No 1223/83 the application of the rules contained in Regulation No 1134/68 on the cancellation of advance fixings is subject to the sole condition that the application of the new representative rate is disadvantageous to the party concerned; that disadvantage may arise, in a case such as this, from the adjustment of monetary compensatory amounts fixed in advance in accordance with Regulation No 1245/83. The scheme of that provision leads to the view that the Council thereby laid down in a limitative manner the substantive legal conditions for the exercise of the right to obtain cancellation under the second subparagraph of Article 4 (1) of Regulation No 1134/68 in connection with the alteration of the representative rates with which this case is concerned.

37 In view of the exhaustive set of rules laid down by the Council, the Commission may not rely on Article 6 of Regulation No 1223/83, which empowers it to adopt detailed implementing rules, in order to impose the additional condition on the right to obtain cancellation that the monetary change in question and the resulting adjustment of the monetary compensatory amounts were not foreseeable for the trader concerned. It follows that the Commission was not entitled to limit the right to obtain cancellation, granted under superior Council legislation, to advance fixings and to certificates or documents attesting them issued before a specific date prior to the date on which the new representative rates took effect, as it did in Regulation No 1244/83.

38 As Regulation No 1244/83 is therefore unlawful for the reasons which have just been set out, there is no need to examine whether the principle of the protection of legitimate expectations was observed in its adoption or whether it complies with the requirement to state the reasons upon which it is based pursuant to Article 190 of the EEC Treaty.

39 The reply to the third and fourth questions must therefore be that the second subparagraph of Article 4 (1) of Council Regulation No 1134/68 of 30 July 1968 and Article 4 (2) of Council Regulation No 1223/83 of 20 May 1983 must together be interpreted as meaning that cancellation of advance fixings may be obtained in all cases where the conditions laid down in those provisions are satisfied. Commission Regulation No 1244/83 of 20 May 1983 is therefore invalid in so far as it limits entitlement to cancellation to advance fixings effected before 17 May 1983.

Costs

40 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings brought before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Pretore, Lucca, by an order of 29 October 1985, hereby rules:

(1) **The Commission acted lawfully in prescribing, in Regulation No 1245/83 of 20 May 1983, that the adjustments to be made to monetary compensatory amounts fixed in advance in the event of a change in the representative rates, as provided for in Article 7 (1) of Commission Regulation No 1160/82 of 14 May 1982, must be made in respect of all advance fixing for which the application was lodged after 16 May 1983, if the transaction concerned was carried out after 22 May 1983.**

(2) **The second subparagraph of Article 4 (1) of Council Regulation No 1134/68 of 30 July 1968 and Article 4 (2) of Council Regulation No 1223/83 of 20 May 1983 must together be interpreted as meaning that cancellation of advance fixings may be obtained in all cases where the conditions laid down in those provisions are satisfied. Commission Regulation No 1244/83 of 20 May 1983 is therefore invalid in so far as it limits entitlement to cancellation to advance fixings effected before 17 May 1983.**

Bosco Everling

Galmot Joliet Schockweiler

Delivered in open court in Luxembourg on 21 April 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the Fifth Chamber