JUDGMENT OF THE COURT
OF 22 NOVEMBER 1973 [1]

Einfuhr- und Vorratsstelle für Getreide und Futtermittel v Eugen Münch (preliminary ruling requested by the Verwaltungsgerichtshof Hessen)

'Periods and Time limits'

Case 139/73

Summary

1. *Period, date and time limit — Meaning*
(Regulation of the Council No 1182/71, Article 3)

2. *Agriculture — Common wheat — Carry-over payments — Grant — Conditions — No period or date within the meaning of Regulation No 1182/71 of the Council*
(Regulation of the Commission No 1196/71, Article 3)

1. It appears from the context of Article 3 of Regulation No 1182/71 of the Council that the concept of a period is to be interpreted as meaning an interval of time expressed in hours, days, weeks, months or years, without reference to a given date or event.
The mention of a specified final date upon which an event must occur or an action be effected corresponds to the concept of a time limit as provided by Articles 4 and 5 of Regulation No 1182/71 and is not to be interpreted as a period within the meaning of Article 3 of that Regulation.

2. Article 3, last indentation, of Regulation No 1196/71 lays down neither a period nor a date within the meaning of Regulation No 1182/71.

In Case 139/73

Reference to the Court under Article 177 of the EEC Treaty by the Hessischer Verwaltungsgerichtshof for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt-am-Main, Adickesallee 1,

and

EUGEN MÜNCH, Getreidemühle, Horgen, Unterbergstraße 38,

on the interpretation of Article 3 of Regulation No 1196/71 of the Commission of 8 June 1971 (OJ L 125, 9. 6. 1971, p. 12), on the requirements for the grant of carry-over payments for common wheat, and of Article 3 of Regulation No 1182/71 of the Council of 3 June 1971 (OJ L 124, 8. 6. 1971, p. 1), laying down the rules for periods, dates and time limits.

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher, C. Ó Dálaigh, A. J. Mackenzie Stuart, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

The facts of the case, the purpose of the reference and the observations submitted under Article 20 of the Statute of the Court of Justice may be summarized as follows:

I — Facts and procedure

By a communication dated 7 August 1971, *despatched* on Monday, 9 August 1971, Firma Münch, plaintiff in the action at first instance, respondent before the national court, claimed the grant of a carry-over payment of DM 764·28 for 33 100 kg of common wheat, held in stock at the end of the 1970/71 marketing season. This claim was rejected by the 'Einfuhr- und Vorratsstelle', the defendant in the action at first instance and appellant before the national court, on the grounds that according to Article 3 of Regulation No 1196/71 of the Commission of 8 June 1971 it should

have been despatched on 7 August 1971 at the latest.

Firma Münch filed a suit in the Frankfurt Verwaltungsgericht claiming the grant of the carry-over payment previously requested.

The claim was upheld at first instance; the national court was of the opinion that pursuant to Article 3 (4), first paragraph, of Regulation No 1182/71 of the Council of 3 June 1971, the period did not expire until 9 August 1971, 7 August 1971 being a Saturday.

The defendant in the main action appealed against this judgment to the Hessischer Verwaltungsgerichtshof on the basis of Article 3 (4), second paragraph, of Regulation No 1182/71. By order of that court of 11 May 1973 the following questions were referred to the Court of Justice:

1. Must the requirement in Article 3 — last indentation — of EEC Regulation No 1196/71 of the Commission dated 8 June 1971 (OJ L 125, 9. 6. 1971, p. 12) be interpreted as fixing a period within the meaning of Article 3 of Regulation (EEC, Euratom) No 1182/71 of the Council dated 3 June 1971 (OJ L 124, 8. 6. 1971, p. 1)?

2. If it does fix such a period, is the definition in Article 3 (4), first paragraph, of Regulation (EEC, Euratom) No 1182/71 applicable, or does Article 3 (4), second paragraph, of the last-mentioned Regulation apply?

3. If (1) is answered in the negative, must the requirement in Article 3 — last indentation — of EEC Regulation No 1196/71 be interpreted as fixing a date within the meaning of Article 5 of Regulation (EEC, Euratom) No 1182/71?

This order was registered at the Court on 4 June 1973.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry. Firma Münch and the Commission submitted written observations.

The respondent in the main action, represented by Me Preuss, Rechtsanwalt, of the Mannheim Bar, and the Commission, represented by Mr Wägenbauer, as agent, made oral observations at the hearing on 23 October 1973.

The Advocate-General delivered his opinion at the hearing on 7 November 1973.

II — Observations submitted under Article 20 of the Statute of the Court of Justice

A — *Observations submitted by the Commission*

After recalling that according to the case law of the Court (Case 32/72, Wasaknäcke, Rec. 1972, p. 1186 and Case 52/72, Walzenmühle Magstadt, Rec. 1972, p. 1272), the period fixed pursuant to Article 9 of Regulation No 120/67 EEC for the despatch of claims for carry-over payments is absolute, the Commission raises the question whether Regulation No 1182/72 of the Council, determining the rules applicable to periods, dates and time limits, applies to Regulation No 1196/72. Article 1 of Regulation No 1182/71 in fact allows derogations from the rules it lays down and it is conceivable that Regulation No 1196/71 involves such a derogation.

If Regulation No 1182/71 is taken to apply in this case then it must be conceded that Article 3 — last indentation — of Regulation No 1196/71 does not contain a 'period' within the meaning of Articles 2 and 3 of Regulation No 1182/71 but rather a date or time limit within the meaning of Article 5 of the same Regulation. The

concept of a 'period' ('délai') in fact presupposes the indication of a defined amount of time, which is not the case here.

The first question should accordingly be answered in the negative; this would make it unnecessary to answer the second question, while the third question should be answered in the affirmative. Article 3 (4) and (5), allowing the extension of 'periods', does not therefore apply.

B — *Observations submitted by Firma Münch*

The respondent shares the opinion of the Frankfurt Verwaltungsgericht that Article 3 of Regulation No 1196/71 of the Commission provides for a period within the meaning of Articles 2 and 3 of Regulation No 1182/71 of the Council.

The reference to the Court of Justice for a preliminary ruling was occasioned solely by the fact that it had not clearly been established whether periods, the beginning and end of which were expressed as dates, were to be understood as periods within the meaning of Regulation No 1182/71. It appears, both from the preamble to Regulation No 1182/71 and from the distinction drawn between the calculation of the period and its establishment, that the authors of the Regulation also had in mind periods which are expressed in terms of dates for beginning and ending, and which can therefore be applied without any further calculation.

If this is a period within the meaning of Article 3 of Regulation No 1182/71, the first and not the second paragraph of Article 3 (4) of that Regulation should be applied, so that the period should be extended to the next working day, that it, 9 August 1971.

Accordingly it is unnecessary to answer the third question, since the case covered by Article 5 of Regulation No 1182/71, namely that where an action is to be effected at a specified moment, at a specified date or within a given number of days following the moment when an event occurs or another action takes place, is not the present case. Moreover Article 5 is only concerned with specific acts, that is, in all probability, acts of the public bodies and institutions of the Member States with regard to the Community, since only those institutions can perform acts of a legal nature.

Grounds of judgment

1 By order of 11 May 1973, lodged at the Registry of the Court on 4 June 1973, the Hessischer Verwaltungsgerichtshof referred three questions pursuant to Article 177 of the Treaty establishing the EEC as to the interpretation of Article 3 — last indentation — of Regulation No 1196/71 of the Commission of 8 June 1971 (OJ L 125, 9. 6. 1971, p. 12) on the requirements for the grant of carry-over payments for certain cereals held in stock at the end of the 1970/71 marketing season, and of Articles 3 and 5 of Regulation No 1182/71 of the Council of 3 June 1971 (OJ L 124, 8. 6. 1971, p. 1) determining the rules applicable to periods, dates and time limits.

2 The first question asks whether the expression 'despatched on 7 August 1971 at the latest' in Article 3 of Regulation No 1196/71 fixes a period within the meaning of Article 3 of Regulation No 1182/71.

3 According to Article 1 of the last-named Regulation, its provisions apply to acts of the Council and of the Commission which 'have been or will be passed' pursuant to the Treaty establishing the European Economic Community or the Euratom Treaty.

Therefore, although introduced subsequently to Regulation No 1196/71, it does apply to the latter.

4 Regulation No 1182/71 lays down general, uniform rules with regard to periods, dates and time limits and distinguishes, in this respect, between periods, which are covered by Articles 2 and 3, and dates and time limits, which are covered by Articles 4 and 5.

As regards periods, the Regulation extends those of which the last day falls on a Saturday, a Sunday or a public holiday; this rule is not reproduced in Articles 4 and 5.

The context of Article 3 shows that the concept of a period is to be taken to mean an interval of time expressed in hours, days, weeks, months or years without reference to a specified date or event.

5 The apparent derogation with regard to periods calculated 'retroactively from a given date or event', contained in the second paragraph of Article 3 (4), confirms this interpretation, since such periods cannot be extended and are accordingly equated with dates and time limits within the meaning of Articles 4 and 5.

These last provisions are concerned with actions which must be effected at a specified date or within a specified time following a given date or event.

6 The hypothesis contained in Article 3 of Regulation No 1196/71, whereby an action must be effected before a given date, is not expressly covered by any of the provisions of Regulation No 1182/71.

However, the reasons for excluding the extension of periods in the event of a period calculated from a given date, are equally valid in the event of an action having to be effected before a given date.

In either case, the element of uncertainty which justifies the extension of periods when these expire on a Saturday, a Sunday or a public holiday is absent.

Accordingly, the mention of a given date of expiry upon which an event must occur or an action must be effected corresponds to the concept of a time limit covered by Articles 4 and 5, and cannot be considered as a period within the meaning of Article 3.

7 Moreover, this interpretation is confirmed by the purpose attributed to the fixing of a final date, which must be adhered to on paid of exclusion, within the context of the system for granting carry-over payments for cereals held in stock which is implemented in Regulation No 1192/71 pursuant to Article 9 of Regulation No 120/67, on the common organization of the market in cereals.

8 The first question having been answered in the negative, the second question does not require to be considered.

9 The third question asks whether the expression 'despatched on 7 August 1971 at the latest' is a date within the meaning of Article 5 of Regulation No 1182/71.

10 Article 5 (1) and (2), first paragraph, covers actions which must be effected at a given moment or at a given date.

This is not the meaning of Article 3 of Regulation No 1196/71.

As stated above, this provision is a legal construction which, although not expressly covered by Regulation No 1182/71, corresponds to the concept of a time limit within the meaning of that Regulation.

Costs

11 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable and as these

proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before a national court, the decision on costs is a matter for that court.

Upon reading the pleadings,

Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the plaintiff in the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulations of the Council Nos 120/67 of 13 June 1967 and 1182/71 of 3 June 1971;
Having regard to Regulation No 1196/71 of the Commission of 8 June 1971;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especically Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT,

in answer to the questions referred to it by the Hessischer Verwaltungs gerichtshof, hereby rules:

Article 3 — last indentation — of Regulation No 1196/71 does not fix either a period or a date within the meaning of Regulation No 1182/71.

Lecourt Donner Sørensen

Monaco Mertens de Wilmars Pescatore Ó Dálaigh

Delivered in open court in Luxembourg on 22 November 1973.

A. Van Houtte
Registrar

R. Lecourt
President