JUDGMENT OF THE COURT (Sixth Chamber)
22 October 1998 *

In Joined Cases C-36/97 and C-37/97,

REFERENCES to the Court under Article 177 of the EC Treaty by the Schleswig-Holsteinisches Verwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Hilmar Kellinghusen

and

Amt für Land- und Wasserwirtschaft Kiel,

Joined party: **Ministerium für ländliche Räume, Landwirtschaft, Ernährung und Tourismus des Landes Schleswig-Holstein,**

and between

Ernst-Detlef Ketelsen

and

* Language of the case: German.

Amt für Land- und Wasserwirtschaft Husum,

Joined party: **Ministerium für ländliche Räume, Landwirtschaft, Ernährung und Tourismus des Landes Schleswig-Holstein,**

on the interpretation and validity, in Case C-36/97, of Article 15(3) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12), and, in Case C-37/97, of Article 30a of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), as amended by Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation No 805/68 and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49),

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn (Rapporteur), President of the Chamber, G. Hirsch, G. F. Mancini, H. Ragnemalm and R. Schintgen, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Kellinghusen and Mr Ketelsen, by Stephan Gersteuer, Assessor in the Bauernverband Schleswig-Holstein e. V., Rendsburg,

— the Amt für Land- und Wasserwirtschaft Kiel, the Amt für Land- und Wasserwirtschaft Husum and the Ministerium für ländliche Räume, Landwirtschaft, Ernährung und Tourismus des Landes Schleswig-Holstein, by Jürgen Gündisch, Rechtsanwalt, Hamburg,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in that Ministry, acting as Agents,

— the Greek Government, by Ioannis Chalkias, Deputy Legal Adviser to the State Legal Council, and Elli-Markela Mamouna, lawyer in the Special Legal Service for the European Communities of the Ministry of Foreign Affairs, acting as Agents,

— the Swedish Government (C-37/97), by Erik Brattgård, Departementsråd, acting as Agent,

— the Council of the European Union, by Jan-Peter Hix and Lauri Railas, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Kellinghusen and Mr Ketelsen, represented by Stephan Gersteuer, of the Amt für Land- und Wasserwirtschaft Kiel, the Amt für Land- und Wasserwirtschaft Husum and the Ministerium für ländliche Räume, Landwirtschaft, Ernährung und Tourismus des Landes Schleswig-Holstein,

represented by Jürgen Gündisch, of the German Government, represented by Claus-Dieter Quassowski, Regierungsdirektor in the Federal Ministry of Economic Affairs, acting as Agent, of the Greek Government, represented by Ioannis Chalkias, of the Swedish Government, represented by Erik Brattgård, of the Council, represented by Jan-Peter Hix, and of the Commission, represented by Klaus-Dieter Borchardt, at the hearing on 26 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 28 May 1998,

gives the following

Judgment

1 By orders of 18 October 1996, received at the Court on 27 January 1997, the Schleswig-Holsteinisches Verwaltungsgericht (Schleswig-Holstein Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation and validity, in Case C-36/97, of Article 15(3) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12), and, in Case C-37/97, of Article 30a of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), as amended by Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation No 805/68 and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49).

2 Those questions were raised in proceedings brought before the Verwaltungsgericht by Mr Kellinghusen and Mr Ketelsen against decisions taken respectively by the Amt für Land- und Wasserwirtschaft Kiel (Office for Agriculture and Water, Kiel) and the Amt für Land- und Wasserwirtschaft Husum (Office for Agriculture and Water, Husum), concerning the grant of direct income subsidies to agricultural producers.

The legal framework

3 Regulation No 1765/92 establishes a system of compensatory payments to producers of certain arable crops. Article 2(1) of that regulation provides that Community producers of arable crops may, under certain specified conditions, claim a compensatory payment.

4 Article 15(3) of Regulation No 1765/92 provides:

'The payments referred to in this Regulation are to be paid over to the beneficiaries in their entirety.'

5 Article 30a of Regulation No 805/68, which was inserted in that regulation by point 5 of Article 1 of Regulation No 2066/92, is worded as follows:

'The amounts to be paid pursuant to this Regulation shall be paid in full to the beneficiaries.'

6 The *Land* Schleswig-Holstein charges administrative fees in consideration of the payment of direct income subsidies to producers. Those fees are charged pursuant to the Landesverordnung über Verwaltungsgebühren (*Land* Regulation on Administrative Fees), tariff headings 15.15 to 15.17 of which, inserted by the Landesverordnung of 29 October 1993 (hereinafter 'the *Land* regulation'), extend the charging of administrative fees to certain areas, with effect from 1 January 1994.

7 Those tariff headings are worded as follows:

'15.15 Grant of a compensatory payment pursuant to Article 2(1) of Regulation (EEC) No 1765/92 ...

a) Basic fee (in DM)

for an area under arable crops of a maximum of 2 hectares	30
for an area under arable crops of between 2 and 13.51 hectares	50
for an area under arable crops of more than 13.51 hectares	80

b) plus, per hectare of the area under arable crops, except for smallholdings under Article 8(2), (in DM) 3

...

15.16 Grant of a special premium for beef producers pursuant to Article 4b(1) of Regulation (EEC) No 805/68 of the Council, as amended by Regulation (EEC) No 2066/92 ...

a) Basic fee (in DM)

maximum of 10 bovine animals	30
between 10 and 30 bovine animals	50
more than 30 bovine animals	80

b) plus, per bovine animal, (in DM) 2

...

15.17 Grant of a premium for maintaining suckler cows pursuant to Article 4d(1) of Regulation (EEC) No 805/68 of the Council, as amended by Regulation (EEC) No 2066/92 ...

a) Basic fee (in DM)	
maximum of 10 suckler cows	30
between 10 and 30 suckler cows	50
more than 30 suckler cows	80
b) plus, per suckler cow, (in DM)	2'.

The main proceedings

8 By decisions of 30 September 1994, 30 November 1994 and 31 March 1995, the Amt für Land- und Wasserwirtschaft Kiel (hereinafter 'the Amt in Kiel') granted Mr Kellinghusen, as applied for, compensatory payments for the marketing year 1994/1995 of a total of DM 175 945.07 for a total area of 236.5 hectares and for growing cereals, protein crops and oil seeds and for economic set-aside. By separate decision of 30 September 1994, the Amt in Kiel also charged him an administrative fee of DM 788 therefor, in accordance with tariff heading 15.15 of the *Land* regulation, made up of a basic fee of DM 80 and an additional amount of DM 3 per hectare of the area under crops.

9 By decision of 31 March 1995, the Amt für Land- und Wasserwirtschaft Husum granted Mr Ketelsen, for the calendar year 1994 and as applied for, the special premium for beef producers of DM 23 305.92 for 67 cows. By separate decision of

31 March 1995, it charged him a fee of DM 214 for the administrative work connected with the grant of the premium.

10 After unsuccessfully lodging complaints against those decisions on fees, Mr Kellinghusen and Mr Ketelsen brought proceedings before the Schleswig-Holsteinisches Verwaltungsgericht on 20 January 1995 and 28 December 1995 respectively.

11 The Verwaltungsgericht is of the opinion that the level of the fees fixed in tariff headings 15.15 to 15.17 of the *Land* regulation is determined in such a way that there is a reasonable relationship between the level of the administrative expenses incurred, on the one hand, and the economic value or other benefit of the administrative action for the person liable for the fees, on the other (principle of 'equivalence'). Those fees are also, according to the Verwaltungsgericht, in accordance with the principle of covering costs, according to which the fees must be determined in such a way that receipts cover, but do not exceed, the administrative resources deployed. The Verwaltungsgericht wonders, however, whether the charging of administrative fees is compatible with Article 15(3) of Regulation No 1765/92, or Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92.

12 In those circumstances the Verwaltungsgericht decided to stay proceedings and seek a preliminary ruling from the Court on the following questions:

Case C-36/97

'(1) Is Article 15(3) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12) to be interpreted as prohibiting the authorities in the Member States from charging applicants administrative fees for processing their applica-

tions for support payments, if those administrative fees correspond to the rates which are otherwise usual in national law and are so low that they are not capable of deterring applicants from applying for support payments?

(2) If Question 1 is answered in the affirmative:

Does Article 15(3) of the said Council Regulation infringe higher-ranking Community law, in particular the principle of cooperation in good faith under Article 5 of the EC Treaty, the principle of proportionality under the third paragraph of Article 3b of the EC Treaty, and the principle of subsidiarity under the second paragraph of Article 3b of the EC Treaty?'

Case C-37/97

'(1) Is Article 30a of Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows (OJ 1992 L 215, p. 49) to be interpreted as prohibiting the authorities in the Member States from charging applicants administrative fees for processing their applications for aid, if those administrative fees correspond to the rates which are otherwise usual in national law and are so low that they are not capable of deterring applicants from applying for aid?

(2) If Question 1 is answered in the affirmative:

Does Article 30a of the said Council Regulation infringe higher-ranking Community law, in particular the principle of cooperation in good faith under Article 5 of the EC Treaty, the principle of proportionality under the third paragraph of Article 3b of the EC Treaty, and the principle of subsidiarity under the second paragraph of Article 3b of the EC Treaty?'

13 By order of the President of the Court of 18 March 1997, those two cases were joined for the purposes of the written and oral procedure and the judgment.

The first question

14 The plaintiffs in the main proceedings, the German Government and the Commission submit that, having regard to their wording and purpose, the provisions in issue prohibit not only a direct deduction from the compensatory payments, but also an indirect reduction consisting, in particular, of the charging of administrative fees.

15 On the other hand, the defendants in the main proceedings and the Greek and Swedish Governments contend that the provisions in issue do not prohibit the levying of administrative fees, but merely demand that the payments should be made in full.

16 It should first be borne in mind that the provisions of Community regulations must be uniformly applied in all the Member States and have, so far as possible, the same effect throughout the territory of the Community (see Case 819/79 *Germany* v *Commission* [1981] ECR 21, paragraph 10).

17 According to the actual wording of Article 15(3) of Regulation No 1765/92, and Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92, the amounts to be paid shall be paid 'in their entirety' and 'in full' to the beneficiaries.

18 Furthermore, as the Court noted in Case C-132/95 *Jensen and Korn-og Foderstofkompagniet* v *Landbrugsministeriet — EF-Direktoratet* [1998] ECR I-2975, paragraph 59, it is expressly stated in the second recital in the preamble to Regulation No 1765/92 that the object of the compensatory payments is to compensate the loss of income caused by the reduction of the institutional prices as part of a new support system for the producers of certain arable crops as a result of reform of the common agricultural policy. According to the third recital of Regulation No 2066/92, the object of the system of premiums envisaged is to grant substantial compensation for the consequences for producers of the reduction of the intervention price in the beef and veal sector.

19 As the Commission has correctly pointed out, the objective of compensating the loss of income caused by the reduction of the institutional prices can be achieved only if the compensatory aid is paid in full to the farmers affected by the consequences of the reform of the common agricultural policy.

20 In fact, to allow Member States the freedom to reduce the levels of compensatory aid by making a deduction of or charging fees for administrative expenses would lead to different compensation for the loss of income of the farmers in one Member State and between the farmers of different Member States, which could interfere with the uniform application of Community law, which is necessary in order to avoid unequal treatment of producers and traders (*Jensen and Korn-og Foderstofkompagniet*, paragraph 49).

21 Accordingly, Article 15(3) of Regulation No 1765/92, and Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92, prohibit the authorities in the Member States from making a deduction from the payments made or from demanding the payment of administrative fees charged for processing applications and having the effect of reducing the amount of the aid.

22 In support of their argument that those provisions of the regulations do not prohibit the deduction of administrative costs from the amount of aid granted, the defendants in the main proceedings and the Greek and Swedish Governments contended that the Court had accepted such a practice in Case 233/81 *Denkavit Futtermittel* v *Germany* [1982] ECR 2933, paragraph 10, which concerned the interpretation of Article 10 of Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves (OJ 1979 L 199, p. 1).

23 In that respect, it should be pointed out that, whereas Regulations No 1765/92 and No 805/68, as amended, provide for the payment in full of the aid, Regulation No 1725/79 made no provision as to the costs of the inspections to be carried out by the Member States (see *Denkavit Futtermittel*, paragraph 7). Since the wording of Regulation No 1725/79 did not prevent Member States either from carrying out such inspections free of charge or from requiring the undertakings in question to reimburse the expenditure which such inspections entail, the Court therefore concluded, at paragraphs 8 and 9 of the judgment in *Denkavit Futtermittel*, that the rules in question left Member States free to resolve the problem of financing the controls.

24 The defendants in the main proceedings then submitted that the provisions relating to full payment in issue in this case could not be interpreted to mean a prohibition on charging administrative fees, since those provisions are not explained in the recitals of Regulations No 1765/92 and No 2066/92. According to the defendants, the lack of reasoning in that respect militates against such an interpretation, since a prohibition on charging administrative fees constitutes an important derogation from the general principle that the Member States are entitled to impose charges for administrative costs.

25 In that context, it is sufficient to state, as the Advocate General, Mr Jacobs, pointed out at paragraph 19 of his Opinion, that the defendants in the main proceedings have in no way established the existence of such a general principle in Community law.

26 Lastly, the defendants submitted that their interpretation of the provisions found support in the fact that not all the regulations of the Council in the 1992 reform of the common agricultural policy contain provisions corresponding to Article 15(3) of Regulation No 1765/92, and Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92. They thus infer that those provisions are purely declaratory and do not extend to fees for administrative costs.

27 It should be pointed out that Article 15(3) of Regulation No 1765/92, and Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92, cannot be interpreted in the light of regulations not containing a provision requiring the full payment of aid to beneficiaries.

28 Consequently, that argument cannot be accepted either.

29 The answer to the first question must therefore be that Article 15(3) of Regulation No 1765/92, and Article 30a of Regulation No 805/68, as inserted by Regulation No 2066/92, prohibit the authorities in the Member States from charging applicants administrative fees for processing their applications for aid even if the administrative fees fixed by those authorities correspond to the rates which are otherwise usual in national law and those fees are so low that they are not capable of deterring applicants from applying for aid.

The second question

30 As to Article 5 of the Treaty, it should be borne in mind that, according to the case-law of the Court, the relations between the Member States and the Community institutions are governed, under that provision, by a principle of sincere cooperation. That principle not only requires the Member States to take all the measures

necessary to guarantee the application and effectiveness of Community law, but also imposes on the Community institutions reciprocal duties of sincere cooperation with the Member States (see, in particular, the order in Case C-2/88 Imm. *Zwartveld and Others* [1990] ECR I-3365, paragraph 17).

31 As the Court pointed out in paragraph 19 of this judgment, the objective pursued by Regulations No 1765/92 and No 2066/92 of compensating the loss of income caused by the reduction of the institutional prices can be achieved only if the compensatory aid is paid in full to the farmers affected by the consequences of the reform of the common agricultural policy, thus ensuring the uniform application of Community law and the equal treatment of the beneficiaries of that aid.

32 It therefore follows that, in adopting the said regulations, the Council did not infringe Article 5 of the Treaty.

33 As to the alleged breach of the principle of proportionality, it must be pointed out that, according to the case-law of the Court, in order to establish whether a provision of Community law complies with that principle, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (see, in particular, Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, paragraph 54).

34 In that context, it is sufficient to observe that the objective pursued by Regulations No 1765/92 and No 2066/92 of compensating the loss of income caused by the reduction of the institutional prices can only be achieved by the obligation to pay the compensatory aid in full to the farmers concerned.

35 Lastly, as to the breach of the principle of subsidiarity, it should be stated that the second paragraph of Article 3b of the Treaty was not yet in force when Regulations No 1765/92 and No 2066/92 were adopted and that provision cannot have retroactive effect.

36 The answer to the second question must therefore be that consideration of the questions referred has disclosed no factor of such a kind as to affect the validity of Regulations No 1765/92 and No 2066/92.

Costs

37 The costs incurred by the German, Greek and Swedish Governments and by the Council and 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 actions 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 questions referred to it by the Schleswig-Holsteinisches Verwaltungsgericht by orders of 18 October 1996, hereby rules:

1) Article 15(3) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops, and Article 30a of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the

common organisation of the market in beef and veal, as inserted by Council Regulation (EEC) No 2066/92 of 30 June 1992 amending Regulation (EEC) No 805/68 and repealing Regulation (EEC) No 468/87 laying down general rules applying to the special premium for beef producers and Regulation (EEC) No 1357/80 introducing a system of premiums for maintaining suckler cows, prohibit the authorities in the Member States from charging applicants administrative fees for processing their applications for aid even if the administrative fees fixed by those authorities correspond to the rates which are otherwise usual in national law and those fees are so low that they are not capable of deterring applicants from applying for aid.

2) Consideration of the questions referred has disclosed no factor of such a kind as to affect the validity of Regulations No 1765/92 and No 2066/92.

Kapteyn Hirsch Mancini

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 22 October 1998.

R. Grass P. J. G. Kapteyn

Registrar President of the Sixth Chamber