JUDGMENT OF THE COURT
15 October 1985 *

In Case 125/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Supreme Court of Ireland for a preliminary ruling in the proceedings pending before that court between

Continental Irish Meat Ltd (in receivership and in voluntary liquidation)

and

Minister for Agriculture

on the interpretation of Article 2 a of Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257), as amended by Article 2 of Regulation (EEC) No 1112/73 of the Council of 30 April 1973 (Official Journal 1973, L 114, p. 4),

THE COURT

composed of: Lord Mackenzie Stuart, President, U. Everling and K. Bahlmann (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

Continental Irish Meat Ltd, the plaintiff in the main proceedings, by John D. Cooke, Senior Counsel, and Kieran Fleck, Barrister, instructed by Gerrard, Scallan and O'Brien, Solicitors, in the written procedure, and by Eoghan P. Fitzsimons, Senior Counsel, in the oral procedure,

* Language of the Case: English

the Irish Government, by Louis J. Dockery, acting as Agent, assisted by Niall Fennelly, Senior Counsel, and James O'Reilly, Barrister,

the United Kingdom, by J. R. J. Braggins, of the Treasury Solicitor's Department, Queen Anne's Chambers, acting as Agent, in the written procedure and by R. N. Ricks, acting as Agent, in the oral procedure,

the Commission of the European Communities, by D. Grant Lawrence and F. Lamoureux, members of its Legal Department, acting as Agents,

after hearing the Opinion of the Advocate General delivered at the sitting on 26 June 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 21 February 1984, which was received at the Court Registry on 14 May 1984, the Supreme Court of Ireland referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Article 2 a of Regulation (EEC) No 974/71 of the Council of 12 May 1971, on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States, to enable it to decide whether the Irish intervention agency may set off against the sum owed by an Irish exporter by way of monetary compensatory amounts upon exportation of agricultural products from Ireland the sum in respect of which the intervention agency has become liable to the same exporter, in accordance with Article 2 a of the aforesaid regulation, by way of monetary compensatory amounts upon importation into the United Kingdom and Italy of agricultural products from Ireland.

2 It must be noted that, in accordance with the abovementioned regulation, monetary compensatory amounts on exports are charged or granted by the exporting Member State, whereas monetary compensatory amounts on imports are, as a general rule, granted or charged by the importing Member State. However, Article 2 a, as amended by Article 2 of Regulation (EEC) No 1112/73 of the Council of 30 April 1973, provides that:

'Where a product exported from one Member State has been imported into a Member State which has to grant a compensatory amount upon importation, the exporting Member State may, by agreement with the importing Member State, pay the compensatory amount which should be granted by the said importing Member State. In this case no compensatory amount shall be granted by the importing Member State for products originating in the Member State concerned.'

3 Continental Irish Meat Ltd. the plaintiff in the main proceedings, which is at present in receivership and in voluntary liquidation, exported beef in 1976 and 1977 *inter alia* to the United Kingdom and Italy. It therefore became liable to the Minister for Agriculture, the defendant in the main proceedings, who represents the Irish intervention agency, for monetary compensatory amounts upon exportation. Since the three Member States concerned exercised the option provided for by Article 2 a, the Irish intervention agency became liable to the plaintiff in respect of the monetary compensatory amounts payable upon importation of the beef into the United Kingdom and Italy.

4 In 1978 the Irish intervention agency paid to the receiver of the plaintiff company the difference between the sum payable by way of monetary compensatory amounts upon importation and the sum payable by way of monetary compensatory amounts upon exportation. The intervention agency sought to set off the remainder of the monetary compensatory amounts payable to the plaintiff upon importation against the monetary compensatory amounts owed by the plaintiff upon exportation.

5 The plaintiff brought an action before the High Court for an order requiring the defendant to pay it the remainder of the sum in question on the ground that one of the conditions laid down by Irish law for the exercise of the right of set-off, namely that the sums in question must be owed by parties to each other in the same right, was not satisfied in this case. The plaintiff maintains that the intervention agency was acting in two different capacities. In claiming monetary compensatory amounts on exports, the intervention agency is acting in the exercise of a power which has been conferred upon it. However, in making payment pursuant to Article 2 a of Regulation No 974/71, it acts as the agent of the importing Member State.

6 The High Court ordered the defendant to pay the sum in question to the plaintiff, whereupon the defendant lodged an appeal with the Supreme Court which decided to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 2 a of Council Regulation (EEC) No 974/71, as amended by Article 2 of Council Regulation (EEC) No 1112/73, to be interpreted to the effect that an exporting Member State which has entered into an agreement with an importing Member State for the payment of a compensatory amount, which should be granted by the importing Member State, is to be regarded as acting as agent of the said importing Member State in making or becoming liable for the payment?'

7 That question calls for a preliminary observation. The Supreme Court has referred to the concept of 'agent' which is peculiar to national law and the interpretation of which, according to the division of powers under Article 177 in connection with the preliminary ruling procedure, is a matter for the national court. However, it is apparent from the order for reference that the question submitted seeks to ascertain whether the two sums involved are owed 'in the same right', if the national intervention agency acts in the same capacity in both cases. The Court of Justice therefore considers that it is required to rule on the latter problem which, in the opinion of the Supreme Court, is purely a question of interpretation of Community law.

8 The plaintiff has emphasized before the Court that where the Irish Minister for Agriculture acts as the intervention agency in charging and recovering a monetary compensatory amount upon exportation of agricultural products from Ireland to another Member State, he is acting in his own right as the national authority designated for that purpose by the relevant Community legislation. The plaintiff has pointed out that, according to the case-law of the Court, in particular its judgment of 18 October 1984 in Case 109/83 *(Eurico* v *Commission* [1984] ECR 3581), the national authorities enjoy in the performance of the tasks entrusted to them by the Community rules on the common organization of agricultural markets complete autonomy as regards the Community authorities. Although the monetary compensatory amounts charged must ultimately be paid into a Community fund, the European Agricultural Guidance and Guarantee Fund, (hereinafter referred to as 'the EAGGF'), there is no question of national intervention agencies being regarded as agents of the Community authorities in charging or granting monetary compensatory amounts on behalf of the Community.

9 By contrast, when the defendant pays the plaintiff the sums claimed by the latter by way of monetary compensatory amounts upon importation into the United Kingdom or Italy, he is acting under Article 2 a merely as a 'paying agent' on behalf of the importing State or as a cashier through whom the money granted by the authorities of that State is channelled. In support of that argument, the plaintiff refers to the judgments of 18 September in Case 795/79 *(Pesch* v *Hoofdproduktschap voor Akkerbouwprodukten* [1980] ECR 2705) and 1 October 1981 in Case 196/80 *(Anglo-Irish Meat Company* v *Minister for Agriculture* [1981] ECR 2263) in which the Court held that the exporting Member State is bound, as regards the determination of the monetary compensatory amount payable upon importation into another Member State, by the tariff classification applied by the latter State to the goods in question. The plaintiff emphasizes, in particular, that in *Anglo-Irish Meat* the Commission itself defined the exporting Member State as a 'paying agent' bound by the general assessment made by the importing Member State of the compensatory amount to be paid upon importation.

10 According to the plaintiff, it follows that the defendant was not acting in the same capacity in both cases and that, consequently, Irish law does not authorize the defendant to exercise the right of set-off in response to the plaintiff's demand for payment.

11 The defendant explains that in practice the right of set-off is exercised on the basis of a current account which is kept by the intervention agency for each exporter and which shows at any time the difference between the monetary compensatory amounts charged on exports and the monetary compensatory amounts paid on imports. The defendant emphasizes that from the legal point of view, the Member States and the agencies which they designate act in complete autonomy as regards the Community authorities. They are bound to apply the Community regulations in their own name and on their full and exclusive responsibility and are responsible to the EAGGF in that regard. In making payment under an agreement concluded pursuant to Article 2 a of Regulation No 974/71, the intervention agency of the exporting Member State is primarily liable to the exporter and in turn is accountable directly to the EAGGF. It follows that the defendant acted in the same capacity in both cases and, consequently, that Irish law authorizes a set-off.

12 According to the defendant, the right of set-off was also recognized by the Court in its judgment of 1 March 1983 in Case 250/78 *DEKA* v *European Economic Community* [1983] ECR 421) in which it permitted the Community institutions to set off a claim for damages on account of the unlawful abolition of production

refunds against a claim for the repayment of export refunds fraudulently obtained by the undertaking concerned from the competent intervention agency, a debt which the latter had assigned to the Community institutions.

13 The United Kingdom considers that it is incorrect to describe the relationship between the intervention agency of the exporting Member State and that of the importing Member State as one of agency, since that is a concept of private law which is alien to administrative relationships and the normal features of which are entirely lacking in the circumstances of this case. The importing Member State has no control over the payment of monetary compensatory amounts by the exporting Member State. The intervention agency of the latter State pays out sums on account of that State which, for its part, is in no way accountable to the importing Member State but only to the EAGGF. Any expenditure incurred is entered in the annual accounts which the exporting State transmits to the Commission for clearance. Tariff classification by the importing Member State forms part of the customs formalities which must be completed before the grant of monetary compensatory amounts upon importation and in no way reflects the existence of a relationship between principal and agent.

14 According to the United Kingdom, the system of payment by the exporting Member State which is provided for in Article 2 a of Regulation No 974/71 is a purely administrative arrangement which arises under Community law and not by agreement between the two Member States concerned. The obligation on the part of the exporting Member State to charge monetary compensatory amounts upon exportation and to pay monetary compensatory amounts upon importation into the other Member State arises in both instances by the operation of Community law and the amounts must be accounted for to the same Community fund. Consequently, the intervention agency acts in the same capacity in both instances and set-off should therefore be permitted because it is in the interests of the proper management of Community financial resources, as the Court held in its aforementioned judgment of 1 March 1983 in *DEKA*.

15 The Commission acknowledges that the judgments of the Court of 18 September 1980 and 1 October 1981 (*Pesch* and *Anglo-Irish Meat*) may be understood as meaning that for the purposes of the application of Article 2 a of Regulation No 974/71, the exporting Member State merely acts on behalf of the importing

Member State when it implements the decision taken by the authorities of the latter State, without any discretion to vary it. However, it considers that an interpretation to the effect that the exporting Member State acts in the two different capacities indicated is incorrect. The common agricultural policy of the Community is administered in each of the Member States by agencies which act for the Community. Thus, in paying monetary compensatory amounts upon importation, the intervention agency of the exporting Member State acts not on behalf of another Member State but on behalf of the Community, as when it pays or charges monetary compensatory amounts upon exportation.

16 In order to resolve this dispute, it must be pointed out first of all that in trade between Member States the purpose of monetary compensatory amounts is to correct the effects of variations in unstable rates of exchange, which in a system whereby markets in agricultural products are organized on the basis of common prices are likely to cause disturbances in trade in such products. Whether they are payable upon exportation or upon importation, whether charged or granted, monetary compensatory amounts serve the same purpose of helping to stabilize the common market organizations. In accordance with that purpose, Article 7 (2) of Regulation No 974/71, as amended by Regulation (EEC) No 2746/72 (Official Journal, English Special Edition 1972 (28 to 30 December), p. 64) provides that as far as the financing of monetary compensatory amounts is concerned, the compensatory amounts charged or granted in trade with Member States are to be treated as part of the expenditure on intervention intended to stabilize the agricultural markets.

17 The purpose of monetary compensatory amounts, namely the achievement of stability, and that method of financing them are in no way affected by the rules laid down in Article 2 a of the regulation, which provides under certain conditions for the grant of monetary compensatory amounts upon importation by the exporting Member State rather than by the importing Member State. The rule merely simplifies administration by making it possible to enter the debts and claims of each creditor in a single account kept by the intervention agency of one Member State in the currency of that State and, as far as financing is concerned, to settle accounts between the exporting Member State and the Community authorities in respect of all the financial consequences of the export and import operations in question.

18 As regards the relationship between the exporting Member State and the importing Member State, there are two stages into which it falls, the one concerning importation in the latter State and the other concerning the payment of monetary compensatory amounts by the exporting State following completion of the import formalities.

19 Article 10 (2) of Regulation (EEC) No 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts (Official Journal 1975, L 139, p. 37), which was in force at the material time, provides that the monetary compensatory amounts granted upon importation are to be paid on completion of customs import formalities by the customs authorities of the importing Member State. It follows that a trader's entitlement to monetary compensatory amounts depends on the decisions adopted by the importing State during that stage, as stated by the Court in its aforementioned judgments of 18 September 1980 and 1 October 1981 in *Pesch* and *Anglo-Irish Meat.*

20 However, once the import formalities have been completed, the grant of monetary compensatory amounts is a matter exclusively for the intervention agency of the exporting Member State in accordance with the rules laid down by Article 2 a of Regulation No 974/71. The authorities of the importing State have no power to adopt decisions or to exercise supervision in that regard, nor are they accountable in any way to the Community. Only the intervention agency of the exporting Member State becomes liable for the payment of monetary compensatory amounts to the trader. The agency pays the amounts due to the latter on behalf of the Member State, which alone is accountable to the Community authorities for that payment. It follows that, during that stage, the role of the intervention agency of the exporting Member State when it pays to the trader monetary compensatory amounts upon importation under Article 2 a of Regulation No 974/71 is no different from its role when it recovers from the same trader monetary compensatory amounts upon exportation.

21 The answer to the question submitted by the Supreme Court of Ireland must therefore be that Article 2 a of Regulation No 974/71 of the Council, as amended by Article 2 of Regulation No 1112/73 of the Council, must be interpreted as meaning that an exporting Member State which has entered into an agreement with an importing Member State for the payment of a monetary compensatory amount which should be granted by the latter State is acting in the same capacity when it pays that amount as when it recovers the monetary compensatory amount payable upon the exportation of the product from its own territory.

Costs

22 The costs incurred by the United Kingdom and by 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, in the nature of 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,

in answer to the question referred to it by the Supreme Court of Ireland by order of 21 February 1984, hereby rules:

Article 2 a of Regulation (EEC) No 974/71 of the Council, as amended by Article 2 of Regulation (EEC) No 1112/73 of the Council, must be interpreted as meaning that an exporting Member State which has entered into an agreement with an importing Member State for the payment of a monetary compensatory amount which should be granted by the latter State acts in the same capacity when it pays that amount as when it recovers the monetary compensatory amount payable upon exportation of the product from its own territory.

Mackenzie Stuart Everling Bahlmann

Bosco Koopmans Due Galmot

Delivered in open court in Luxembourg on 15 October 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President