JUDGMENT OF THE COURT (Fourth Chamber)
27 March 1990 *

In Case C-229/88

Cargill BV, a company incorporated under Netherlands law, whose registered office is in Amsterdam, Netherlands;

Speelman's Oliefabrieken BV, a company incorporated under Netherlands law, whose registered office is in Rotterdam, Netherlands;

Beoco Ltd, a company incorporated under English law, whose registered office is in Liverpool, England;

BOCM Silcock Ltd, a company incorporated under English law, whose registered office is in Hampshire, England;

Cargill UK Ltd, a company incorporated under English law, whose registered office is in Hull, England;

Erith Oil Works Ltd, a company incorporated under English law, whose registered office is in Erith, England;

Louis Dreyfus & Co. Ltd, a company incorporated under English law, whose registered office is in London, England;

Compagnie Cargill SA, a company incorporated under French law, whose registered office is in Saint-Germain-en-Laye, France;

Cedol SA, a company incorporated under French law, whose registered office is in Boulogne-Billancourt, France;

Comexol SA, a company incorporated under French law, whose registered office is in Paris, France;

* Language of the case: English.

NV Cargill, a company incorporated under Belgian law, whose registered office is in Antwerp, Belgium;

NV Vamomills, a company incorporated under Belgian law, whose registered office is in Kortrijk, Belgium;

A/S Carl Rasmussen Korn og Foderstoffer Gamby, a company incorporated under Danish law, whose registered office is in Søndersø, Denmark;

DS Industries APS, a company incorporated under Danish law, whose registered office is in Copenhagen, Denmark;

Palolio & Palvino SpA, a company incorporated under Italian law, whose registered office is in Naples, Italy;

Adm Ölmühlen GmbH, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany;

Brökelmann & Co. Ölmühle und Raffinerie KG, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany;

Deutsche Conti-Handelsgesellschaft mbH, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany;

Ölmühle Hamburg AG, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany;

O & L Sels, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Neuss, Federal Republic of Germany;

C. Thywissen, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Neuss, Federal Republic of Germany;

Union Deutsche Lebensmittelwerke GmbH, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany;

Huileries de l'Arceau SA, a company incorporated under French law, whose registered office is in Lézay, France;

represented by H. J. Bronkhorst, advocate with the right of audience before the Hoge Raad (Supreme Court) of the Netherlands, and E. H. Pijnacker, of the Amsterdam Bar, with an address for service in Luxembourg at the Chambers of Jaques Loesch, 8, rue Zithe,

applicants,

v

Commission of the European Communities, represented by D. Grant Lawrence and P. Oliver, members of the Commission's Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Regulation (EEC) No 1587/88 of 7 June 1988 suspending advance fixing of the subsidy for colza, rape and sunflower seed (Official Journal 1988, L 141, p. 55) is void,

THE COURT (Fourth Chamber)

composed of: C. N. Kakouris, President of Chamber, T. Koopmans and M. Díez de Velasco, Judges,

Advocate General: J. Mischo
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 12 December 1989,

after hearing the Opinion of the Advocate General at the sitting on 6 February 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 August 1988, Cargill BV and 22 other companies whose business consists in particular in the processing of oil seeds (hereinafter referred to as 'the applicants') brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Commission Regulation (EEC) No 1587/88 of 7 June 1988 suspending advance fixing of the subsidy for colza, rape and sunflower seed (Official Journal 1988, L 141, p. 55) is void.

2 On 7 June 1988 the applicants lodged with the respective competent authorities applications for advance fixing of the processing subsidy for a total quantity of some 370 000 tonnes of colza, rape and sunflower seeds.

3 The rates applicable at that time had been laid down in Commission Regulation (EEC) No 1507/88 of 31 May 1988 fixing the amount of the subsidy on oil seeds (Official Journal 1988, L 135, p. 31), which entered into force on 1 June 1988.

4 However, on 7 June 1988, the Commission, considering that the conditions laid down in Article 8 of Council Regulation (EEC) No 1594/83 of 14 June 1983 (Official Journal 1983, L 163, p. 44), as amended by Council Regulation (EEC) No 935/86 of 25 March 1986 (Official Journal 1986, L 87, p. 5) were satisfied, adopted Regulation No 1587/88 suspending advance fixing of the subsidy for colza, rape and sunflower seed in the case of certificates the application for which was lodged from 7 to 11 June 1988.

5 On the same day, the Commission adopted Regulation (EEC) No 1584/88 (Official Journal 1988, L 141, p. 48) fixing, for colza, rape and sunflower seed in particular, the new amount of the subsidy on oil seeds at a lower rate than that which applied on 7 June 1988.

6 Following the adoption of Regulation No 1587/88, the applicants were informed by their national authorities of the content of that regulation and of the rejection

of their respective applications for advance fixing of the subsidy lodged on 7 June 1988.

7 They then brought the present action for a declaration that Regulation No 1587/88 is void in so far as it applies to the applications for advance fixing lodged on 7 June 1988.

8 By application lodged at the Court Registry on 31 August 1988, the applicants requested the Court to suspend the operation of Regulation No 1587/88 and to grant other interim relief, pursuant to Articles 185 and 186 of the EEC Treaty and Article 83 of the Rules of Procedure. That application was dismissed by Order of the President of the Court of 26 September 1988.

9 By a separate document lodged at the Court Registry on 28 October 1988, the Commission raised an objection of inadmissibility and asked the Court, pursuant to Article 91 of the Rules of Procedure, to give a decision on that objection before considering the substance of the case.

10 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the applicable legislation and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

11 The Commission contends that the application is inadmissible since the contested regulation is not of individual concern to the applicants within the meaning of the second paragraph of Article 173 of the Treaty. It states that it did not adopt that regulation on the basis of the applicants' applications or a number of applications, including those lodged by the applicants, which it could determine and individualize. The contested regulation applies to those traders that considered lodging an application within the period covered by the suspension and to those that had already lodged an application but for which no certificate had yet been issued. It is therefore a measure of general application.

12 The applicants maintain on the contrary that their application is admissible since, on the date on which Regulation No 1587/88 entered into force, the number and

the identity of the importers which had lodged an application for advance fixing were already established and verifiable. The purpose of the contested regulation was therefore to affect the legal situation of a closed circle of traders which had given a commitment to the Community by lodging an application for advance fixing on 7 June 1988.

13 Pursuant to the second paragraph of Article 173 of the EEC Treaty, a natural or legal person may institute proceedings for a declaration that a regulation is void only if that regulation in fact constitutes a decision which is of direct and individual concern to that person.

14 It must be observed in the first place that the contested regulation was adopted during the course of 7 June 1988 and was published the next day in the Official Journal. The applicants lodged their applications for advance fixing on 7 June 1988. It can therefore be stated that the contested regulation was adopted on the same date as that on which the applications were lodged.

15 It is also apparent from the citations in the preamble to that regulation that it was adopted on the basis of Article 8 of Regulation No 1594/83 of 14 June 1983, as amended by Regulation No 935/86 of 25 March 1986, paragraph 2 of which provides that the suspension of advance fixing may be extended to applications already lodged where certain circumstances arise, namely where there is a material error in the amount of the subsidy which is published or where certain factors may create a monetary distortion between Member States, and when those cases may create discrimination between interested parties.

16 Those conditions are determined objectively and do not allow the applicants to be individually identified since the Commission has no way of establishing the identity or even the number of traders affected by the suspension.

17 It must be borne in mind, as the Court held in its judgment of 21 November 1989 in Case C-244/88 *Usines coopératives de déshydration du Vexin and Others* v *Commission* [1989] ECR 3811, paragraph 12 of the decision, that a regulation suspending advance fixing affects both applications pending when the suspension comes into operation and those lodged during the period of suspension. Similarly, in the present case, the contested regulation affects all the applications for advance fixing lodged during the period of suspension.

18 It must therefore be concluded that the contested regulation applies to objectively determined situations and that it produces legal effects with respect to categories of persons envisaged in the abstract. It is therefore of general application within the meaning of the second paragraph of Article 189 of the Treaty and is not of individual concern to the applicants within the meaning of the second paragraph of Article 173 of the EEC Treaty.

19 It follows that the application must be dismissed as inadmissible.

Costs

20 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions, they must be ordered jointly and severally to pay the costs, including those of the application for interim measures.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the applicants to pay the costs jointly and severally, including those of the application for interim measures.

Kakouris Koopmans Díez de Velasco

Delivered in open court in Luxembourg on 27 March 1990.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Fourth Chamber