JUDGMENT OF THE COURT (Sixth Chamber)
19 November 1991 *

In Case C-235/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance (Regional Court) Morlaix (France), for a preliminary ruling in the proceedings pending before that court between

Aliments Morvan S. à r. l.

and

Directeur des Services Fiscaux du Finistère,

on the interpretation of Community law with regard to the levying of a parafiscal charge on cereals,

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of Chamber acting as the President of the Sixth Chamber, G. F. Mancini and C. N. Kakouris, Judges,

Advocate General: J. Mischo,
Registrar: V. Di Bucci, Administrator,

after considering the written observations submitted on behalf of:

— Aliments Morvan, by Alain Pierre, of the Rennes Bar, and Patrick Dibout, of the Paris Bar,

* Language of the case: French.

— the French Government, by Philippe Pouzoulet, Deputy Director of the Department of Legal Affairs in the Ministry of Foreign Affairs, acting as Agent, and Gérard de Bergues, Principal Deputy Secretary in that Ministry, acting as Deputy Agent,

— the Commission of the European Communities, by Johannes Føns Buhl, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Aliments Morvan, represented by J.-P. Gosselin and P. Dibout, of the Paris Bar, and the Commission of the European Communities at the hearing on 2 May 1991,

after hearing the Opinion of the Advocate General at the sitting on 11 June 1991,

gives the following

Judgment

1 By judgment of 27 June 1990, which was received at the Court on 30 July 1990, the Tribunal de Grande Instance (Regional Court), Morlaix, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Community law with a view to determining whether it precludes a Member State from levying a parafiscal storage charge on cereals.

2 That question was raised in proceedings between Aliments Morvan (hereinafter referred to as 'Morvan') and the Directeur des Services Fiscaux du Finistère (Director of the Finistère Tax Department) concerning an application for repayment of amounts levied for the benefit of Office Interprofessionnel des Céréales (National Cereals Trades Board) (hereinafter referred to as 'ONIC') by way of a parafiscal charge on cereals introduced by Decree No 53-975 of 30 September 1953 on the organization of the market in cereals and the Office Interprofessionnel des Céréales (*Journal Officiel de la République Française* of 1 October 1953, p. 8635).

3 That charge, which has since been extended and amended on several occasions, is governed at present by Decree No 87/676 of 17 August 1987 on the parafiscal storage charge in the cereals sector (*Journal Officiel de la République Française* of 19 August 1987, p. 9520). For the years subsequent to 1987 the levying of the charge has been authorized each year by the Loi des Finances (Finance Law). The implementing rules for Decree No 87-676 were laid down by an order of 14 March 1988 on the storage charge and the charge on imports and exports of cereal products intended for the supplementary budget for agricultural social security benefits.

4 Under Article 1 of Decree No 87-676, the charge in question is to be levied on approved collectors and cereal producers in respect of all quantities of common wheat, durum wheat, barley and maize sold or utilized. It is also to be levied on importers in respect of the quantities of such cereals imported. The rate of the charge was fixed at FF 3 per tonne of barley, wheat or maize at the time of the events which gave rise to the main proceedings.

5 Morvan manufactures feedingstuffs from cereals. Since it had to pay the charge, which it regards as contrary to Community law, upon purchasing such cereals, it applied for it to be repaid for the period 1 July 1986 to 31 May 1988. Its application was refused by decision of the Directeur des Services Fiscaux du Finistère, whereupon it challenged that decision before the Tribunal de Grande Instance, Morlaix.

6 It was in that context that the national court requested the Court to provide it, by way of preliminary ruling, with

'such guidance as to the interpretation of Community law as will enable it to determine whether the storage charge introduced by Decree No 53-975 of 30 September 1953, the period of application of which was extended by Decrees Nos 82-732 and 82-733 of 23 August 1982 and by Decree No 87-676 of 17 August 1987 and its implementing order of 14 March 1988, is compatible with Community law as interpreted by the Court'.

7 Reference is made to the Report for the Hearing for a fuller account of the facts, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 Even though the national court's question refers to Community law as a whole, the Court considers that its examination must relate to the machinery of the common agricultural policy laid down, in particular, for the cereals sector in Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975 L 281, p. 1).

9 In that respect, it should be observed that, as the Court has already held, in particular in the judgment in Joined Cases 36/80 and 71/80 *Irish Creamery Milk Suppliers Association* v *Ireland* [1981] ECR 735, paragraph 20, the essential aim of the machinery of a common organization of the market such as that for cereals is to achieve price levels at the production and wholesale stages which take into account both the interests of Community production as a whole in the relevant sector and those of consumers, and which guarantee market supplies without encouraging over-production.

10 The Court also held in that judgment that those aims might be jeopardized by national measures which have an appreciable influence on price levels on the market. In the case of a charge imposed on certain agricultural products, the risk of such influence depends not only on its rate and the period for which it is in force, but equally on the situation on the market in question and, as regards supplies, above all on how general its effect is, that is to say, the number of agricultural products to which it applies. A short-term duty on a large number of products may be neutral in the sense that it does not alter the structure of agricultural production. On the other hand, if the duty encourages producers to replace some of the production of the goods subject to the duty by production of other goods not subject thereto, the duty is liable to create distortion on a number of markets.

11 With regard to the charge which forms the subject-matter of the main proceedings, it appears from the documents before the Court that it was introduced in 1953 and that it is levied on only three types of cereals, namely wheat, barley and maize, in other words a very limited number of agricultural products.

12 In view of those considerations, the reply to be given to the national court's question must be that Community law, and in particular the machinery of the common agricultural policy laid down for the cereals sector in, *inter alia*, Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals, precludes a Member State from levying a charge on a limited number of agricultural products over a prolonged period where that charge is likely to encourage economic agents to alter the structure of their production or consumption. It is for the national court to determine whether the charge at issue in a dispute before it has had such effects.

Costs

13 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (Sixth Chamber),

in answer to the question referred to it by the Tribunal de Grande Instance, Morlaix, by judgment of 27 June 1990, hereby rules:

Community law, and in particular the machinery of the common agricultural policy laid down for the cereals sector in, *inter alia*, Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals,

precludes a Member State from levying a charge on a limited number of agricultural products over a prolonged period where that charge is likely to encourage economic agents to alter the structure of their production or consumption. It is for the national court to determine whether the charge at issue in a dispute before it has had such effects.

Kapteyn Mancini Kakouri

Delivered in open court in Luxembourg on 19 November 1991.

J.-G. Giraud
Registrar

P. J. G. Kapteyn
President of Chamber,
acting as President of the Sixth Chamber