JUDGMENT OF THE COURT
OF 11 JULY 1974 [1]

L'Union des Minotiers de la Champagne v French Government (preliminary ruling requested by the French Conseil d'État

'Derived intervention prices'

Case 11/74

In Case 11/74

Reference to the Court under Article 177 of the EEC Treaty by the French Conseil d'État for a preliminary ruling in the action pending before that court between

UNION DES MINOTIERS DE LA CHAMPAGNE, Reims,

and

THE FRENCH GOVERNMENT

on the validity of Regulation (EEC) No 1210/70 of the Council of 29 June 1970 establishing the principal marketing centres for cereals for the 1970/1971 marketing year and the derived intervention prices applicable at those centres (OJ L 141, p. 9),

THE COURT

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

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: French

JUDGMENT

Facts

The order for reference and the written observations submitted under Article 20 of the EEC Statute of the Court may be summarized as follows:

I — Facts and procedure

1. The Union des Minotiers de la Champagne applied to the Conseil d'État to annul as *ultra vires* 'Decree No 70-691 of 31 July 1970 fixing the prices for cereals and the financial arrangements for the 1970/1971 marketing year'. The French Decree, which adopts the provisions of Regulation No 1210/70, is invalid according to the applicant, *inter alia,* because it has no legal basis, since Regulation No 1210/70 is itself unlawful.

The Conseil d'État, taking the view that the validity of the Decree challenged depended on the validity of Regulation No 1210/70, decided to stay the proceedings and referred to this Court in accordance with Article 177 of the EEC Treaty the question 'whether Regulation No 1210/70 of the Council of the European Communities fails to comply with the provisions of the second paragraph of Article 40 (3) of the Treaty establishing the European Economic Community, with the second paragraph of Article 4 (1) of Regulation No 120/67 of the Council of the European Economic Community, dated 13 June 1967, and with Articles 1, 3 and 6 of Regulation No 131/67 of the Council of the European Economic Community, dated 13 June 1967'.

2. Article 2 of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ No 117 of 19 June 1967, p. 2269/67), provides that for the Community each year a target price and a basic intervention price shall be fixed for Duisburg, which is the centre having the largest deficit as regards cereals.

Article 4 of the same Regulation provides for the fixing of 'derived intervention prices'. The second paragraph of Article 4 (1) provides:

'The derived intervention prices shall be fixed for the same standard quality, at the same stage and under the same conditions as the target price, for all marketing centres in the Community except Duisburg. The derived intervention prices shall be calculated in such a way that the differences between them correspond to the price disparities in prices to be expected in a normal harvest under natural conditions of price formation on the market and allow the free movement of cereals within the community in accordance with the requirements of the market'.

In accordance with Article 4 (5) of Regulation No 120/67, the Council issued Regulation No 131/67/EEC of 13 June 1967 laying down rules for deriving intervention prices and for determining certain marketing centres for cereals (OJ No 120 of 21 June 1967, p. 2362/67). Article 1 of this Regulations provides:

'For the purpose of fixing derived intervention prices, market prices shall be considered as being established under natural conditions of price formation as follows:

— in deficit areas whose supplies depend to a certain extent on imports, on the basis of the price at which imported cereals are offered in those areas;

— in production areas whose surpluses contribute to a certain extent to the supply of the abovementioned areas, on the basis of the abovementioned price and the cost of transport to those areas;

— in ports of shipment, on the basis of the price in the main production area for exports and the cost of transport to the main port of shipment for that area;

— in other production areas whose surpluses are likely to be exported to a certain extent, on the basis of the price ruling in the ports of shipment and the costs of transport to those ports;

— in deficit areas other than those mentioned above, on the basis of prices in the surplus area best placed from the freight point of view, and the cost of transport to the deficit area'.

Article 3 of the Regulation provides that 'derived intervention prices shall be fixed in such a way that there is no discrimination between Community producers . . .'.

Article 6 provides:

'Derived intervention prices for the marketing centres . . . shall be fixed in such a way that they cannot disturb the normal pattern of trade'.

Each year under these Regulations the Council fixes the principal marketing centres and the derived intervention prices effective in these centres within the meaning of Article 4 (4) (b) of Regulation No 120/67. Regulation No 1210/70 contains the rules for the marketing year 1970/1971. The Regulation fixed these prices at 94·95 u.a. per 1 000 kg of common wheat for Compiègne and at 91·77 u.a. for Chartres.

3. It appears from the particulars forwarded by the Conseil d'État that the Union des Minotiers claims that Regulation No 1210/70 is invalid mainly on the basis of the following arguments.

It states that the method of fixing derived intervention prices provided for in particular in Article 1 of Regulation No 131/67 leads to the discrimination condemned in Article 40 of the EEC Treaty, impedes the natural conditions of price formation on the market and leads to disturbances in the normal pattern of trade contrary to the categorical requirements of Regulations Nos 120/67 and 131/67.

The result of the regionalization of intervention prices is that the derived intervention price, that is to say the floor price below which the miller cannot buy the wheat he needs for grinding, will be fixed, for example, at FF 47 in the Marne as compared to FF 45·13 in Central France, for the marketing years 1967/1968 to 1969/1970.

This difference would be tolerable if the production of these areas was intended for export to deficit areas of the Community, but it becomes arbitrary, unjust and contrary to the principles mentioned above, when it is, in truth, a small percentage of the production which is so intended in each area. The applicant states that exports to Germany represent only 8 to 18 % of the whole wheat harvest.

The applicant states that the following economic phenomenon takes place:

In time of surplus the intervention price will necessarily become the market price. Whatever the destination of the wheat the price will be FF 47 in the Marne and FF 45·13 in Central France. All consumers and in particular the millers from the first area will be subject to this disadvantage of FF 1·87 in relation to their competitors from the Central region. On the other hand it is the producer from the latter region who will be at a disadvantage in relation to the producer from the north or east in marketing his harvest.

In the applicant's opinion the discrimination condemned by the EEC Treaty is obvious. The disturbance in the normal pattern of trade is likewise obvious. As regards more than 80 % of the

production which does not go to the Community, demand is attracted to the area where the derived intervention price is the lowest. Thus the Paris region, which traditionally obtained its supplies in the Marne, a region having a large production, now makes its purchases in the Central region. It is no less obvious that the natural conditions of price formation on the market are not respected.

4. The order of the Conseil d'État dated 18 January 1974 was registered at the Court on 20 February 1974.

Written observations were submitted on behalf of the Council by its Legal Adviser, Professor D. Vignes, and on behalf of the Commission by its Legal Adviser, J. H. J. Bourgeois.

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.

II — Written observations submitted to the Court

The *Council* first of all considers the system of regionalization of prices for cereals, its basic rules and how they were applied in the 1970/1971 marketing year.

It states *inter alia* that in the Community the fact that surplus regions overlap geographically with deficit regions, the fact that the latter may partly obtain their supplies outside the Community together with the amount of excess in the surplus regions result in prices being derived mainly in terms of transport costs although they do not reflect solely a mathematical computation. Regionalization can therefore be defined according to both fixed and variable criteria.

The Council then considers the applicant's complaints and states that in fact it is the basic rule of regionalization which is being challenged.

In the Council's opinion the lack of specificity in the complaints is not the least difficulty in replying to the applicant. This leads the Council to a preliminary observation: the lack of particulars in the supplementary statement filed at the Conseil d'État results from the fact that neither in laying down the mechanisms for regionalization under Regulation No 131/67 nor in the application of these mechanisms for the 1970/71 marketing year by Regulation No 1210/70 did the Council of the Communities 'go beyond what could be regarded as necessary to attain the objectives' of the Community organization of the market in cereals. The Council also states that the vagueness of the application arises from the fact that the main proceedings only involved a statement of claim and a statement of defence, without a reply or a rejoinder.

The Council then replies to the objections against Regulation No 131/67.

As regards the alleged disregard of the rule requiring consideration of the 'disparities in prices to be expected in a normal harvest under natural conditions of price formation', the Council states that it as an improper claim on principle to claim that the criteria for fixing the derived intervention prices provided for in Article 1 of Regulation No 131/67 may differ from the natural conditions of price formation.

As regards the alleged infringement of Article 6 of Regulation No 131/67 which states that the derived intervention prices must not disturb the normal pattern of trade, the Council stresses the illogicality of saying that a provision of a Regulation infringes another of the same Regulation.

The Council states further that the objective of Article 6 is not to condemn any provision which has the effect of altering the 'traditional pattern'. The only concept of which Article 6 speaks is the alteration of the 'normal pattern', which is very different. This concept is contained in the idea of compensation between surplus areas and deficit areas

on the Community level, in which Regulation No 120/67 sought to place the single market in cereals. A certain development of French exports is to be expected in the normal pattern of trade.

As regards the third complaint with regard to Regulation No 131/67, the Council states that it would be difficult to say that Article 1 of the Regulation has a discriminatory effect with regard to producers and consumers contrary to Article 40 of the EEC Treaty, since the derived prices for each of the five areas is fixed on the basis of the 'natural conditions of price formation'.

The Council states further that market prices in France in 1970/71 were constantly at a higher level than the highest derived intervention prices and that as regards the 1970/71 marketing year the price situation was clearly the reverse of that which the supplementary statement claimed as resulting from the system.

As regards the determination of the different derived intervention prices under Regulation No 1210/70, the Council refers not only to the absence of proof regarding substantial errors in their calculation, but also to the absence of specific grounds of complaint.

It states likewise that the price disparity in question does not seem to have harmed the applicant. During the calendar years 1967 and 1970 roughly equal amounts of flour were milled in the department of the Marne, and although sales in the department itself went down slightly, those in the other departments and especially those for export went up.

The *Commission* is of the opinion that the request for a preliminary ruling is admissible although it queries the interest that an individual could have in an application to annul a French decree. Supposing that this Court declared that the Regulation is not valid and as a result the Conseil d'État annulled the Decree, matters would remain as they are between the parties to the proceedings: the directly applicable Community Regulation, which is in truth the sole objective of the proceedings, would in no way be affected.

The Commission takes the view that the Decree which is challenged is a simple reproduction of Regulations Nos 1210/70 of the Council and 1248/70 of the Commission (OJ L 142, p. 20) and observes that the objections to which such detailed rules for implementing Community law give rise ought not to be dealt with within the context of the present case.

It outlines the framework of Regulations into which the provisions, the validity of which is challenged, fit. It states that a system of derived intervention prices meets the necessity of simultaneously pursuing two equally essential objectives, that is, that of ensuring a fair standard of living for the agricultural population in the Community and that of the free movement of cereals within the Community. A single intervention price would not allow this requirement to be met. If the intervention price were fixed at a high level in relation to the target price, the intervention price would be too high in surplus areas; save as regards local needs, the whole of the production would be sold on intervention and only cereals bought and transported by the intervention agencies would be transfered for sale from the production areas to the consumer areas.

It states moreover that the criteria contained in Regulation No 131/67 should not be rigidly applied. The wording itself of Article 1 shows this. Moreover their very objective, that is the anticipation of 'the disparities in prices to be expected in a normal harvest under natural conditions of price formation on the market', accords ill with criteria which are both strict and pre-established.

The Commission then examines the case in the main proceedings. It believes it possible to deduce from the file that the dispute is not about the way in which Regulation No 1210/70 applied the

system of derived intervention prices but about the system itself as set out in Regulation No 131/67. Consequently it is of the opinion that to establish the validity of Regulation No 1210/70 it suffices to show that the system of derived intervention prices is in accordance with the second paragraph of Article 4 (1) of Regulation No 120/67 and does not disregard the provision of the second paragraph of Article 40 (3) of the Treaty.

It states that the system of derived intervention prices does not interfere with the 'natural conditions of price formation'. It observes that this requirement is not an objective in itself. It is only in so far as the two objectives of the system referred to above are not achieved that the question can arise whether the derived intervention prices have been correctly established. In this respect the Commission notes that the figures relating to the proportion represented by the rest of the Community in the sales outlets for the French production has increased. In the Commission's view these figures are in any case not decisive in assessing whether the regionalization of prices has been properly applied. What matters in short is the proportion which the market of a deficit region of the Community represents in the sales outlets of a surplus region of the Community.

The Commission observes further that the fact that during a period of plenty the derived intervention prices become the prices on the market in each region is inherent in the very existence of the intervention price; it does not show that the differences between the prices in each region which arise in these circumstances do not correspond to the disparities in prices which arise under natural conditions of price formation. Moreover, derived intervention prices are established on the assumption of a normal harvest and not on the assumption of a marked disequilibrium between supply and demand.

The Commission states that the system does not disturb the 'normal pattern of trade' either. This term refers to the 'normal' and not the 'traditional' pattern. The normal pattern is that which is established in the single market. The fact that regionalization leads to a disparity between the intervention price in the Marne and that in Central France, whereas during the marketing year in question more than 80 % of the French production continued to be marketed in France, is not such as to undermine the validity of the regionalization of prices with regard to the criterion of the 'normal pattern'. The character appropriate to the derived intervention price applicable in the Marne is to be assessed in terms of the production of the Marne which is disposed of in the deficit areas of Germany and should be able to be disposed of in these areas in a free market, where the normal pattern of trade can develop without any hindrance. It is not assessed in relation to the disposal of the French production in a Community market, in which the pattern of trade has not yet developed quite normally.

Finally the Commission states that the system of derived intervention prices does not disregard Article 40 (3) of the Treaty. It observes that this rule is intended to protect the interests of agricultural producers and consumers and not those of processors and dealers in agricultural products. Moreover, as this Court has stated in its Judgment of 24 October 1973 (Case 43/72, *Merkur v Commission*, [1973] ECR, p. 1055), the disparity in treatment of the millers constitutes an infringement of this principle only if it appears arbitrary. It is clear that this disparity cannot be regarded as arbitrary. The difference between the derived intervention prices is intended to reflect in those prices the disparities which arise under natural conditions of price formation on the market. In the last analysis it depends on the more or less advantageous position

of a given production area in relation to the deficit areas.

The Commission points out that according to the figures which it has the sales of French flour in Germany increased from 17 800 metric tons in 1965/66 and 17 400 metric tons in 1966/67 to 32 700 metric tons in 1970/71. Although the difference in intervention prices had the result of increasing the purchase price for millers in certain regions in relation to others, in return it necessarily played a rôle in opening frontiers.

The oral observations of the Commission were presented on 13 June 1974.

The Advocate-General delivered his opinion on 10 July 1974.

Law

1 By an order dated 18 January 1974, filed at the Court on 20 February, the Conseil d'État of the French Republic referred the question, under Article 177 of the Treaty establishing the EEC, whether Regulation No 1210/70 of the Council of 29 June 1970, determining the principal marketing centres for cereals and the derived intervention prices applicable at those centres for the 1970/71 marketing year, fails to comply with the provisions of the second paragraph of Article 40 (3) of the EEC Treaty, of the second paragraph of Article 4 (1) of Regulation No 120/67 of the Council of 13 June 1967 and of Articles 1, 3 and 6 of Regulation No 131/67 of the Council of 13 June 1967.

2 This question has been raised in respect of an application in which the Union des Minotiers de la Champagne asked the Conseil d'État to annul Decree No 70-691 of 31 July 1970 fixing the prices for cereals and the financial arrangements for the 1970/71 marketing year.

3 The Conseil d'État considered that the legality of this Decree, which adopted the derived intervention prices as laid down in units of account by Regulation No 1210/70 and converted them to French francs, depends on the validity of that Regulation.

4 It appears from the order for reference that the applicant has maintained before the Conseil d'État that the Regulation fails to comply with certain provisions of the Treaty and of the Regulations of the Council relating to

the common market in cereals in that it creates discrimination between producers or consumers within the Community, alters the disparities in prices resulting from the natural conditions of price formation on the market and involves disturbance in the normal pattern of trade.

5 The second paragraph of Article 40 (3) of the Treaty provides that the common organization of agricultural markets 'shall exclude any discrimination between producers or consumers within the Community'.

6 The aim of Regulation No 120/67 of the Council on the common organization of the market in cereals is to enable compensation to be effected between the surpluses of the producer areas and the needs of the deficit areas by providing, apart from the basic intervention price, for the establishment of derived intervention prices, in such a way 'that the differences between them correspond to the price disparities in prices to be expected in a normal harvest under natural conditions of price formation on the market and allow the free movement of cereals within the Community in accordance with the requirements of the market' (second paragraph of Article 4 (1)).

7 Rules for fixing derived intervention prices were laid down by Regulation No 131/67 of the Council, Article 1 of which specifies, in respect of five different classes of areas, the factors on the basis of which market prices shall be considered as being established under natural conditions of price formation.

8 Under Article 3 of the same Regulation 'in all cases, derived intervention prices shall be fixed in such a way that there is no discrimination between Community producers and in particular that cereals coming from one region cannot be offered in another region for less than the intervention price applicable therein'.

9 Article 6 provides that intervention prices for the marketing centres other than the principal centres shall be fixed 'in such a way that they cannot disturb the normal pattern of trade'.

10 Regulation No 1210/70 of the Council specified, in respect of the 1970/1971 marketing year, the principal marketing centres and the derived intervention prices applicable at those centres by fixing, *inter alia*, the price of common wheat at 94·95 u.a. per 1 000 kg for Compiègne (Marne) and 91·77 u.a. for Chartres (Central Frnace).

11 It appears from the documents supplied by the Conseil d'État that the applicant in the main proceedings, the members of which come from the region of the Marne, has stated that the disparity in prices as between this region and Central France is such as to cause them detriment in periods of plenty, in particular by putting them at a disadvantage in relation to the millers of Central France in disposing of their products on the market in the Paris region and that the fixing of derived intervention prices fails to meet the provisions of the Treaty and the basic regulations.

12 In this respect in particular the applicant in the main proceedings has criticized the system of regionalization of derived prices which does not respect 'the natural conditions of price formation on the market', on the basis of which, under the second paragraph of Article 4 (1) of Regulation No 120/67, the differences between the derived intervention prices for the different marketing centres has to be calculated.

13 The principle of regionalization of derived prices, as put into effect by Regulation No 131/67, involves the establishment of five categories of area and the definition, in respect of each of them, of the criteria on the basis of which derived intervention prices must be fixed so as to have regard to the natural conditions of price formation.

14 Transport costs between the areas, in particular from the surplus areas to the deficit areas are a weighty component of these criteria, but other components likewise enter into account, such as the geographical situation of the surplus and deficit areas, the needs of other consumer areas, imports from third countries and the possibilities of export.

15 Although this system can give rise, in certain special circumstances, to the fixing of derived prices which differ slightly from prices which would arise in a free market, it must nevertheless be regarded as basically in accordance with the general requirements of the second paragraph of Article 4 (1) of

Regulation No 120/67, especially as these requirements are such as to leave a certain margin of discretion to the Council.

16 It is right therefore to conclude that the derived intervention prices fixed by Regulation No 1210/70, within the framework of the system of regionalization provided for by Regulation No 131/67, accord with Regulation No 120/67.

17 The applicant in the main proceedings has further stated that the derived intervention prices fixed by Regulation No 1210/70 are of such a nature as to disturb the normal pattern of trade, thereby infringing Article 6 of Regulation No 131/67.

18 In this respect it appears from the statistics in the file that the common organization of the market has involved certain alterations in the traditional pattern of trade relating to cereal products, especially in northern France.

19 These alterations, however, far from constituting disturbances in the normal pattern of trade, must be regarded as resulting from the establishment of a single market and thus arising from the attainment of the objective of the provisions relating to the common organization of the market.

20 It follows that the derived intervention prices fixed by Regulation No 1210/70 are not incompatible with Article 6 of Regulation No 131/67.

21 Finally, the plaintiff in the main proceedings has referred to the prohibition on any discrimination between producers or consumers within the Community contained in the second paragraph of Article 40 (3) of the Treaty and mentioned again in Article 3 of Regulation No 131/67.

22 Difference in treatment cannot be regarded as constituting discrimination which is prohibited unless it appears arbitrary.

23 Price differences resulting from Regulation No 1210/70 for producers and consumers of wheat are determined on the basis of objective criteria proper to the common rules of the market and cannot therefore be regarded as discriminatory.

24 It is therefore right to reply to the question raised by the Conseil d'État that the examination of this question has not revealed matters of a nature such as to affect the validity of Regulation No 1210/70 of the Council.

Costs

25 The costs incurred by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

26 Since these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before a national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Conseil d'État of the French Republic, by order dated 20 February 1974, hereby rules:

The question raised has not revealed matters of a nature such as to affect the validity of Regulation No 1210/70 of the Council.

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 11 July 1974.

A. Van Houtte
Registrar

R. Lecourt
President