JUDGMENT OF THE COURT (Fifth Chamber)
14 March 2002 *

In Case C-132/99,

Kingdom of the Netherlands, represented by M.A. Fierstra and J. van Bakel, acting as Agents,

applicant,

supported by

Kingdom of Spain, represented by M. López-Monís Gallego, acting as Agent, with an address for service in Luxembourg,

intervener,

* Language of the case: Dutch.

Commission of the European Communities, represented by T. van Rijn and C. van der Hauwaert, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for partial annulment of Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1999 L 61, p. 37), in so far as it requires a correction of 50% of the expenditure declared by the Kingdom of the Netherlands in respect of hemp production aid, namely a correction of NLG 117 277,

THE COURT (Fifth Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, D.A.O. Edward, A. La Pergola, M. Wathelet and C.W.A. Timmermans, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 November 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 April 1999, the Kingdom of the Netherlands brought an action under the first subparagraph of Article 173 of the EC Treaty (now, after amendment, the first subparagraph of Article 230 EC) for the partial annulment of Commission Decision 1999/187/EC of 3 February 1999 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1995 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (OJ 1999 L 61, p. 37, hereinafter 'the contested decision'), in so far as it requires a correction of 50% of the expenditure declared by the Kingdom of the Netherlands in respect of hemp production aid, namely a correction of NLG 117 277.

2 By order of the President of the Court of 26 January 2000, the Kingdom of Spain was granted leave to intervene in support of the form of order sought by the Kingdom of the Netherlands.

The legal framework

3 Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ 1970 L 94, p. 13) determines the expenditure incurred by the Member States to be taken over by the 'Guarantee' section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and the conditions for granting such financing. According to Article 8(1) of that regulation:

'The Member States in accordance with national provisions laid down by law, regulation or administrative action shall take the measures necessary to:

— satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;

— prevent and deal with irregularities;

— recover sums lost as a result of irregularities or negligence.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.'

4 Under Article 5(2) of Regulation No 729/70:

'The Commission, after consulting the Fund Committee referred to in Article 11,

(a) shall decide:

— at the beginning of the year, on the basis of the documents referred to in paragraph 1(a), on an advance payment for the authorities and bodies not exceeding one third of the credits entered in the budget;

— during the year, on additional payments intended to cover expenditure to be borne by an authority or body;

(b) shall, before the end of the following year, on the basis of the documents referred to in paragraph 1(b), make up the accounts of the authorities and bodies.'

5 The common organisation of the market in hemp is governed by Regulation (EEC) No 1308/70 of the Council of 29 June 1970 on the common organisation of the market in flax and hemp (OJ 1970 L 146, p. 1), Article 4 of which provides for the introduction of a system of aid for flax and hemp grown in the Community. The amount of such aid is to be fixed per hectare of area sown and harvested.

6 Article 4 of Commission Regulation (EEC) No 1164/89 of 28 April 1989 laying down detailed rules concerning the aid for fibre flax and hemp (OJ 1989 L 121, p. 4) initially used to provide:

'Aid shall be granted only in respect of areas:

(a) which have been completely sown and harvested and on which normal cultivation work has been carried out; and

(b) for which a declaration of areas sown has been made in accordance with Article 5.'

7 Commission Regulation (EC) No 1469/94 of 27 June 1994 amending Regulation (EEC) No 1164/89 (OJ 1994 L 159, p. 12), which entered into force on 5 July 1994, added the following text to Article 4(a) of Regulation No 1164/89:

— in English

'To be considered as having been harvested, areas must have undergone an operation:

— carried out after seed formation,

— aimed at terminating the growing cycle of the plant, and

— carried out with the aim of valorising the stalk, with or without seed.

The valorisation referred to in the third indent shall be considered as having been desired if the plant has been pulled up or if it has been cut by a cutter bar operating, in the case of flax and hemp, at a maximum height of 10 cm and 20 cm respectively from the ground.

...'

— in Dutch

'Het vlas op een bepaalde oppervlakte wordt als geoogst beschouwd wanneer op die oppervlakte een bewerking is geschied die:

— na de zaadvorming is uitgevoerd,

— op beëindiging van de groeicyclus van de plant was gericht,

en

— ten doel had te bereiken dat de bruikbaarheid van de vlasstengel, in voorkomend geval zonder het zaad, wordt vergroot.

De in het derde streepje bedoelde voorwaarde wordt geacht te zijn vervuld indien de plant uit de grond is getrokken of is gemaaid met een voor vlas op maximaal 10 cm en voor hennep op maximaal 20 cm boven de grond afgestelde maaibalk.

...'

8 Commission Regulation (EC) No 466/96 of 14 March 1996 amending Regulation (EEC) No 1164/89 (OJ 1996 L 65, p. 6), which entered into force on 22 March 1996, inserted the following text after the third indent of Article 4(a):

'Seed formation as referred to in the first indent shall be considered to be terminated if the number of hemp seeds or flax seed capsules found to have reached their final shape and volume is greater than the number of other hemp seeds or flax seed capsules'.

Procedure for the clearance of accounts

9 In September 1995, EAGGF officials carried out an inspection visit to the Netherlands in order to check whether the legislation applicable to the system of Community aid for flax and hemp had been complied with. They arrived at the

conclusion that the areas on which hemp was grown in the Netherlands were not eligible for the aid granted on the ground that the crop had been harvested before seed formation, contrary to Article 4(a) of Regulation No 1164/89, as amended by Regulation No 1469/94 (hereinafter 'Regulation No 1164/89 as amended'). The crop had been harvested during flowering or shortly afterwards, when the seeds were still in their milky state. However, in view of the risk that harvested hemp may be misused for the production of drugs, the requirements laid down in the legislation in force must be scrupulously observed. Furthermore, the EAGGF officials took the view that the Netherlands authorities had failed to fulfil their obligations as regards monitoring the importation of hemp seeds from third countries.

10 A meeting was subsequently held between the Netherlands Government and the Commission. That Government did not deny that the hemp had been harvested before the seed had fully formed, while it was still in the milky state. It none the less pointed out that, given that the cultivation of the hemp in question was intended exclusively for fibre production and that optimal fibre quality was reached before flowering has ended, it is economically more advantageous to harvest the plant when it has not yet fully matured.

11 Not satisfied with those explanations, the Commission informed the Netherlands Government, by letter of 29 October 1997, that it intended to apply a correction at a flat rate of 50% of the expenditure declared in respect of budget item 1402 (hemp) for 1995, on the ground that the hemp had been harvested before seed formation.

12 A formal request for conciliation was subsequently submitted by the Kingdom of the Netherlands. The Conciliation Body found, in its report of 15 May 1998, that it had been unable to establish, with any certainty, whether there existed a definition agreed by all the experts as to what precisely constituted a 'formed' seed.

13 On 12 January 1999, the Commission adopted its summary report on the results of its review of the clearance of EAGGF accounts, Guarantee Section, in respect of the 1995 financial year (the 'summary report'). In it, it reiterated its view that the areas under hemp in the Netherlands could not qualify for aid. It decided to apply a correction of 50% of the declared expenditure in view of the fact that the grant of aid normally concerned two components, namely, the production of fibre and the production of seed, that all the areas in question had been harvested too early and that seed formation was to be regarded as terminated when about 50% of the seeds had matured.

The first plea: infringement of Regulation No 1308/70

The first part of the first plea in law: misinterpretation of Regulation No 1308/70

14 By the first part of its first plea in law, the Netherlands Government, supported in that respect by the Spanish Government, submits that the Commission has misinterpreted Regulation No 1308/70 in considering that a correction of 50% could be justified by the fact that the grant of aid for the production of hemp concerned two components, namely the production of fibre and the production of seed. The regulation lays down no requirement that the fibre and the seed should be harvested from the same plant nor does it make any separate reference to the production of hemp seed. The Commission therefore introduced a requirement which was not laid down in that regulation and thus infringed Community law.

15 The Commission replies that the Netherlands Government is confusing conditions for the granting of aid with adjustment of the pecuniary sanction to be

applied where those conditions are not met. In fact, it could have refused the entire expenditure. In view of the fact that there undeniably was a certain level of fibre production it none the less looked for a criterion enabling it to reduce the sanction and thus arrived at the conclusion that it was appropriate to apply a correction of 50%. That reduction does not however amount to an interpretation or an application of Regulation No 1308/70.

16 In that regard, it is sufficient to find that neither in the contested decision nor in the summary report has the Commission claimed that the regulation in question requires that fibre and seeds be harvested from the same plant. Since the Commission took the view that it could apply a correction amounting to 100% of the declared expenditure but that such a sanction was excessively onerous, it looked, in fact, for a criterion enabling it to adjust that correction. The complaint of the Netherlands Government is therefore unfounded.

17 The first part of the first plea must therefore be rejected.

The second part of the first plea in law: infringement of Article 8 of Regulation No 1308/70

18 By the second part of the first plea in law, the Netherlands Government claims that the Commission was wrong in finding, in the summary report, that the importations into the Netherlands of hemp seed from third countries had not been monitored in accordance with the provisions of Regulation No 1308/70. The truth is that such monitoring was always properly carried out.

19 The Commission contends in that regard that the shortcomings in the monitoring referred to in the summary report did not, in any event, have any influence on the contested decision. It did not apply any financial sanction in that respect, nor could it have done so, since it is not a condition for obtaining production aid. The reference to such a shortcoming was nothing more than one finding among others, and did not influence the disputed correction in any way.

20 In that regard, it is sufficient to observe that it follows from the contested decision and from the summary report that the disputed correction was carried out on account of the alleged non-compliance with the conditions for granting the aid, namely by harvesting the hemp before seed formation, and not for failing to fulfil obligations relating to the monitoring of imports from third countries. Consequently, whatever the answer to the question whether the Commission's complaint is well founded, it has not given rise to any negative consequences for the Kingdom of the Netherlands and cannot therefore adversely affect it.

21 Accordingly, the second part of the first plea is inadmissible and must therefore be rejected.

The second plea in law: infringement of Regulation No 1164/89 as amended

The first part of the second plea in law: failure to take account of the Dutch version of Article 4(a) of Regulation No 1164/89, as amended

22 By the first part of its second plea in law, the Netherlands Government submits that the Commission's complaint that the hemp had been harvested before the

seeds had sufficiently matured must be examined in light of the Dutch version of Article 4(a) of Regulation No 1164/89 as amended. The requirement that harvesting should follow seed formation was, in that version, expressly restricted to flax. The Commission thus infringed that provision by imposing that requirement in respect of hemp as well.

23 According to the Commission, that argument cannot be upheld. The Dutch version is vitiated by a manifest error on which the Kingdom of the Netherlands cannot rely. Although, in that version, the first sentence and the third indent of Article 4(a) of Regulation No 1164/89, as amended, expressly mention flax, it is none the less the case that the provision then refers to flax and hemp. A reasonably attentive reader would therefore conclude that there is clearly a problem which must be resolved.

24 The Netherlands authorities were closely involved in the drafting of Regulation No 1469/94. By comparing the Dutch version with the other language versions, they should have noticed immediately that there was an error. In any event, they should have contacted the Commission's representatives to discuss the problem and find a solution to it.

25 In that regard, it is to be noted that the Dutch version of Article 4(a) of Regulation No 1164/89, as amended, is different from the other language versions in that it refers, at the beginning of the first sentence, only to flax and not to hemp, whereas the other language versions are worded generally and do not mention expressly either of those plants. The same observation applies to the

third indent, except in the German version. However, in the sentence that follows immediately after the third indent, the Dutch version mentions, as do all the other language versions, different maximum cutting heights for flax and for hemp.

26 Regulation No 1164/89 also mentions in its title and in almost all of its provisions both plants in the same way and deals with them in largely similar ways. Where they require to be treated differently, that is clear, as in Articles 2 and 3 of the regulation, from the wording of the text.

27 In those circumstances, as the Advocate General also observes in paragraph 33 of his Opinion, the reference to flax only in the first sentence and in the third indent of Article 4(a) of the Dutch version of Regulation No 1164/89 as amended constitutes an easily detectable error. The Netherlands Government cannot therefore place reliance on an interpretation based on the Dutch version.

28 The first part of the second plea must therefore be rejected.

The second part of the second plea in law: erroneous interpretation of the concept of seed formation in Article 4(a) of Regulation No 1164/89, as amended

29 By the second part of its second plea in law, the Netherlands Government, supported in that respect by the Spanish Government, submits that the Commission committed an error in law in interpreting Article 4(a) of Regulation

No 1164/89, as amended, in such a way that seed formation is not regarded as terminated unless at least 50% of the seeds have matured. Such a requirement was introduced only by a subsequent amendment of that provision, namely by Regulation No 466/96, which is not applicable in the present case.

30 It is contended that Article 4(a) of Regulation No 1164/89, as amended, is applicable to the year in question and it provides only in general terms that harvesting must take place after seed formation. That was the case here. Although the seed was still in the milky state when it was harvested, it was none the less formed. Hemp seed is already formed during flowering without however being mature. Given that the quality of the plant's fibre diminishes after flowering, it is preferable to harvest on flowering or immediately thereafter. That approach is perfectly compatible with Article 4(a) of Regulation No 1164/89, as amended.

31 The Commission makes the general point that hemp, a plant which constitutes a considerable danger to public health on account of its intoxicating properties, is very sensitive. It is therefore necessary to find a balance between concern to eliminate that danger and the significant interest in the cultivation of hemp in certain regions of the Community. To the extent that Community legislation provides for aid for the planting of hemp, the conditions for its grant must be applied very strictly in order to avoid abuses.

32 One of those conditions for grant is that the harvest must take place after seed formation. Even under Article 4(a) of Regulation No 1164/89 as amended, that condition means that, at harvest, the seed must be completely formed and not still in the milky state. That requirement is linked in particular with the risk that the

hemp might be misused in view of its intoxicating properties. Its tetrahydrocannabinol content peaks when flowering has ended, that is precisely in the period during which the hemp was harvested in this case, and diminishes when the grain forms.

33 In that regard, it is not disputed that hemp is a plant which may be dangerous to public health. Nor is it disputed that the legislation relating to aid for the production of hemp takes account of the sensitive nature of that plant in laying down very strict requirements as regards the conditions for granting aid and the monitoring to be carried out. As stated in the third recital in the preamble to Regulation No 1164/89, fraud must be prevented.

34 It follows that the requirements laid down in Article 4(a) of Regulation No 1164/89, as amended, must be interpreted with particular rigour. As regards the concept of harvest after seed formation, that concept must be construed, for the reasons set out at paragraphs 39 to 42 of the Opinion of the Advocate General, in such a way as to prevent, as far as possible, the plant from being harvested when its tetrahydrocannabinol content may still pose a danger to public health. It cannot therefore be held that harvest of the hemp seed when in its milky state, prior to the flowering of the plant or immediately thereafter, satisfies the requirement of harvesting after seed formation imposed by Article 4(a) of Regulation No 1164/89, as amended.

35 Accordingly, the second part of the second plea must be rejected.

The third plea in law: infringement of the obligation to state reasons

36 By its third plea in law, the Netherlands Government claims that the reasons stated for the contested decision are inadequate and that it therefore infringes Article 190 of the EC Treaty (now Article 253 EC). The statement of the reasons for the contested decision does not make it possible to discern the reasoning which led the Commission to apply the disputed 50% correction. In order to understand that reasoning, it is necessary to turn to the summary report which refers, in turn, to Regulation No 1308/70 and the guidelines laid down by the Commission in June 1993 regarding the financial corrections which must be applied in the context of the clearance of EAGGF accounts (hereinafter 'the guidelines'). However, neither that regulation nor those guidelines provide for a financial correction of 50%. The guidelines set out explicitly and exhaustively the cases in which a flat-rate correction may be imposed and the rates provided for are 2%, 5% and 10%. The rate of 50% is not included in that list.

37 The Commission contends that the reasons for the contested decision were stated adequately in its account of the facts and in the summary report. It states moreover that the Kingdom of the Netherlands was closely involved in the process of drafting the contested decision and that it knew perfectly well, following extensive correspondence on the matter, the reasons why a correction of 50% was chosen.

38 The Commission further states that neither the summary report nor any other document in the case-file refers to the guidelines in order to justify the correction as imposed. The guidelines relate to the action to be taken where there are shortcomings in the monitoring carried out by the Member States, a problem which does not arise in the present case.

39 In that regard, it follows from the case-law of the Court, as summarised in paragraph 48 of the Opinion of the Advocate General, that the decisions taken by the Commission concerning the clearance of EAGGF accounts do not require detailed reasons if they are taken on the basis either of summary reports or of correspondence between the Member State and the Commission.

40 In the present case, the summary report sets out clearly at point 4.7.4.1.2, which runs to several pages, the reasons why the disputed correction was imposed, namely that the findings made at the farms which were subject to on-the-spot inspections and at the premises of the undertakings responsible for processing the hemp showed that the whole of the areas where hemp was grown in the Netherlands had been harvested before seed formation. Similarly, it is clear from the summary report and from the parties' pleadings that the Netherlands Government was closely involved in the process leading to the decision and was aware of the reasons for which the Commission took the view that it must not charge to the EAGGF the whole amount of the expenditure declared by the Kingdom of the Netherlands by way of aid for the production of hemp. It is precisely because it did not accept those reasons that the Netherlands Government brought the matter before the Conciliation Body.

41 In view of those circumstances, the Kingdom of the Netherlands cannot validly claim, in the present action, that the obligation to state reasons for the contested decision was infringed. It follows that the third plea in law must be dismissed.

The fourth plea in law: breach of the principle of equal treatment

42 By its fourth plea in law, which it does not set out in detail, the Netherlands Government submits that, by departing from the guidelines without giving reasons for doing so, the Commission has infringed the principle of equal treatment.

43 According to the Commission, that plea is irrelevant. As it has already shown, the guidelines were not applicable in the present case and it therefore neither applied nor disregarded them.

44 In that regard, it is sufficient to hold that since the Commission was not required to apply the guidelines to cases which they did not govern, the complaint of unequal treatment is manifestly unfounded. The fourth plea in law must therefore be rejected.

45 In view of the foregoing considerations, the application of the Kingdom of the Netherlands must be dismissed in its entirety.

Costs

46 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful, the latter must be ordered to pay the costs. Under the first subparagraph of Article 69(4) of those Rules, the Kingdom of Spain, which intervened in these proceedings, is to bear its own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Kingdom of the Netherlands to pay the costs;**

3. **Orders the Kingdom of Spain to bear its own costs.**

Jann Edward La Pergola

Wathelet Timmermans

Delivered in open court in Luxembourg on 14 March 2002.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber